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A  
FULL REPORT  
OF THE  
TRIAL AT BAR,  
IN THE  
COURT OF KING'S BENCH,

IN WHICH  
THE RIGHT HON. ARTHUR WOLFE, HIS MA-  
JESTY'S ATTORNEY GENERAL, PROSECUTED,

AND  
A. H. ROWAN, Esq.  
WAS DEFENDANT,

ON AN INFORMATION FILED EX OFFICIO AGAINST THE  
DEFENDANT, FOR HAVING PUBLISHED

A SEDITIOUS LIBEL.

JANUARY 29, 1794.

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P E R T H:

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M,DCC,XCIV.





## TRIAL, &c.

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ON Wednesday, January 29, 1794, the day appointed for this trial, the court of King's Bench sat at ten o'clock. Mr Rowan came into court, attended by Edward Byrne, Esq. of Mullinahack, and Hampden Evans, Esq.

The Counsel for the crown were,  
Right hon. the Prime Serjeant  
Attorney General  
Solicitor General  
Richard Frankland, Esq. and  
W. P. Ruxton, Esq.  
Thomas Kemmis, Esq. Crown Solicitor.

Counsel for the defendant,  
Mr Curran,  
The Recorder of the city of Dublin,  
And Mr Fletcher.  
Mr Mathew Dowling, Solicitor.

The High Sheriffs of the city of Dublin returned the writ *venire facias*, with their pannel annexed, to the clerk of the crown. The pannel was called over; only fourteen gentlemen having answered their names,

Lord Clonmel. It is strange that gentlemen will not attend; 'tis a duty they owe both to the public and the defendant; both expect it, and should have it. I must call fines on those who will not appear; and if I do, I cannot take them off. What time did you summon them for, Mr Sheriff?

A 2

Mr

Mr Sheriff *Giffard*. My lord, the summonses were issued before your lordship had appointed to sit so early as ten; they were to appear between ten and eleven.

Lord *Clonmel*. It would have been more correct to have fixed a certain time.

Sheriff *Giffard*. I met some gentlemen, my lord, who told me they would *not* come.

Lord *Clonmel*. It shall be my fault if I do not try what I can do with them; I will not take off one fine. I will wait, however, till it is quite eleven, to leave no excuse. Report to me those gentlemen's names who refused.

Counsellor Dominick Rice and some other persons having forced themselves into the dock, occasioned a noise in the court.

Lord *Clonmel*. Gentlemen, that place does not become you; you must go out; I cannot suffer any one to stand there.

The dock was accordingly cleared.

The pannel was called over again, when seven gentlemen more appeared.

Lord *Clonmel*. Call the pannel on fines, if the counsel for the prosecution desire it.

*Attorney General*. We do, my lord.

*Clerk of the Crown*. Call the right hon. James Cusse on pain of 10l.

Lord *Clonmel*. This gentleman is a member of parliament. I know the house of commons is jealous of its members being summoned on juries; there are some resolutions on their journals against it.

The gentlemen of the house of commons, whose names were on the pannel, were accordingly called—not on fines.

*C. of Cr.* Call Richard Wogan Talbot, Esq. on a fine of 10l.

The Bailiffs were examined on oath, and one of them



them declaring he had not summoned Mr Talbot, the fine was taken off.

Lord *Clonmel*. I am glad to mention a complaint made against you, the sheriffs bailiffs, by a Mr Maximilian Faviere. Faviere writes me word, that if he does not give you christmas-boxes and presents, you plague him by summoning him on juries—he is, I understand, an old military gentleman who does not stir abroad; if I find this charge made against you substantiated, you shall certainly be punished.

Christmas Weekes, Esq. fined 10l.

John Vernon, Esq. fined 10l.

Sheriff *Giffard*. He has been certainly summoned, for he wrote me a letter in which he excuses himself as not being a freeholder of this city.

Lord *Clonmel*. Let him make affidavit of that, to have the fine taken off.

Hall Lamb, Esq. fined 10l.

Francis Hopkins, Esq. fined 10l.

Benjamin Woodward, Esq. fined 10l.

Robert Lear, Esq. do.

William —, Esq. do.

Nathaniel Trumbull excused, being now in England.

Robert Hanna, Esq. 10l.

Daniel Kinahan, Esq. 10l.

Lord *Clonmel*. How many appear?

*Cl. of Crown*. Twenty-four\*.

The Jury were then called.

1 Sir F. Hutchinson, sworn

2 Frederick Trench, Esq. sworn

3 William

\* In the order in which they came into court—

Frederick Trench, Esq. Robert Lea, George Buchanan, John Reed, George Palmer, Stukely Simon, William Moore, Alex. Place, Joshua Dixon, Humphry Minchin, Thomas Sherard, Robert Law, William Little, James Hamilton, jun. David Weir, Drury Jones, W. M'Kenzie, Sir F. Hutchinson, Christopher Harrison, William Lancake, Richard Manders, Richard Fox, Robert Powel, Robert Walker.



- 3 William Moore, Esq. sworn
- 4 Humphry Minchin, Esq. sworn
- 5 Richard Manders, Esq.

Mr *Fletcher*. I beg leave to ask Mr Manders a question. Have you, sir, ever read or declared any opinion on the publication in question?

Mr *Manders*. Not that I recollect.

Mr *F*. Have you ever talked of this publication?

Mr *M*. Not that I recollect.

*Prime Serjeant*. If Mr Fletcher wishes to challenge Mr Manders, let him do it—but he must not do it by an examination of the gentleman himself?

Mr Manders was sworn

- 6 George Palmer, Esq. sworn

- 7 John Reed, Esq.

Mr *Fletcher*. Pray, Mr Reed, do not you hold a place under the crown?

Mr *Reed*. I do.

*Attorney General*. What has the crown to do with this question?—a question between the defendant and the whole country?

Lord *Clonmel*. I hope I shall see the time when Mr Fletcher will think a place under the crown no cause of challenge or objection.

*Attorney General*. I am ashamed to hear this cause of challenge offered. I trust the gentleman attends more to his oath than to any other motive. The crown would be far from thanking him or any other man for over bounding his conscience in their service. I do not even know the gentleman's name, but if he is an honest man, and he appears a respectable one, the defendant has nothing to fear.—The infirmation has, I know, been thrown out for a particular purpose, and is intended to have an effect; it is unworthy a good cause.

Mr *Curran*. I feel that the objection is not a legal one;

one; if therefore the counsel for the crown desire to have the gentleman sworn, I cannot resist him.

*Attorney General.* I have said, I did not know the gentleman; but I never will yield to such an objection, which goes to do away every thing respectable in the state.

Mr Reed was sworn.

8 Robert Lea, Esq. sworn.

Joshua Dixon, Esq. sworn.

9 Richard Fox, Esq.

*Mr Fletcher.* I am desired to ask Mr Fox, whether he has declared his opinion on this subject?

*Mr Dixon* (already sworn) answered—I have.

*Lord Clonmel* puts the question to Mr Fox.

*Mr Fox.* I do not recollect that I have, but I wish to decline being on the jury.

*Mr Curran.* One of the jurors already sworn has answered that he has given an opinion on the subject. Now, I consent to withdraw him, if the counsel for the crown feel this to be an objection.

*The At. General.* I shall consent to withdraw, but I cannot allow any other question than the usual one to be asked of the jurors.

*Mr Curran.* I find I am mistaken by the learned counsel. My object is to have an unexceptionable jury. We have asked these questions, supposing that to be the wish of the other side. If the condition of withdrawing Mr Dixon, be our not asking more questions, I will not agree.

*Lord Clonmel.* Am I to understand, that Mr Dixon is, or is not, withdrawn by consent?

*Mr Curran.* If the Attorney General desires it, I do consent.

*At. General.* Then, to gratify Mr Curran, I do desire it.

Mr Dixon was withdrawn.

*Mr Fletcher* again questioned Mr Fox as before.

Mr



Mr Fox. I have formed no opinion, nor do I even know what is the subject of the trial.—Sworn.

10 Christopher Harrison, Esq. sworn.

11 George Perrin, Esq. sworn.

12 Thomas Sherard, Esq.

Mr Curran. Have you, Sir, expressed any opinion touching this question?

Solicitor General. I beg your lordship will draw a line where this sort of conversation may stop; surely the answer to this question will be an excuse to every man who wishes to withdraw himself, and decline being on the jury.

Mr Sherard. I am totally unacquainted with the business which brings us here. Sworn.

Mr Ruxton. My lords and gentlemen of the jury, this is an information, filed *ex officio* by the king's Att. General, against the defendant; that he, on the 16th day of December, 1792, published a certain paper, entitled an address to the volunteers of Ireland, which paper was of a libellous and seditious tendency. To this he has pleaded *not guilty*.

The title of the information was then read by the clerk. The information is in the following words.

#### INFORMATION.

That Archibald Hamilton Rowan, of the city of Dublin, Esq; being a person of a wicked and turbulent disposition, and maliciously designing and intending to excite and diffuse amongst the subjects of this realm of Ireland, discontents, jealousies, and suspicions of our sovereign lord the king and his government, and disaffection and disloyalty to the person and government of our said lord the king, and to raise very dangerous seditions and tumults within this kingdom of Ireland, and to draw the government of this kingdom into great scandal and disgrace, and to incite the subjects of our said lord the king to attempt with force and violence, and with arms,

to



to make alterations in the government, state, and constitution of this kingdom, and to incite his Majesty's said subjects to tumult and anarchy, and to overturn the established constitution of this kingdom, and to over awe and intimidate the legislature of this kingdom by an armed force, on the 16th day of December, in the 33d year of the reign of our said present sovereign Lord George the Third, &c. with force and arms at Dublin aforesaid, to wit, in the parish and ward of St Michael the Arch-angel, and in the county of the said city, wickedly, maliciously, and seditiously, did publish, and cause and procure to be published, a certain false, wicked, malicious, scandalous and seditious libel, of and concerning the government, state, and constitution of this kingdom, according to the tenor and effect following, that is to say,

"The society of United Irishmen, at Dublin, to the Volunteers of Ireland, William Drenan, chairman, Archibald Hamilton Rowan, secretary.—*Citizen soldiers*, you first took up arms to protect your country from foreign enemies and domestic disturbance, for the same purposes it now becomes necessary that you should *resume* them; a proclamation has been issued in England for embodying the militia, and a proclamation has been issued by the Lord Lieutenant and council in Ireland, for suppressing all seditious associations, in consequence of both these proclamations it is reasonable to apprehend danger from abroad, and danger at home; from whence but from apprehended danger, are these menacing preparations for war, drawn through the streets of this capital?" (meaning the City of Dublin)

"*or whence if not to CREATE that internal commotion, which was not found to shake the credit, which was not affected to blast that volunteer honour, which was hitherto inviolate*, are these terrible suggestions and rumours,

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mours, and whispers that meet us at every corner, and agitate, at least our old men, our women, and children?

Whatever be the motive, or from whatever quarter it arises, alarm has arisen; *and you, volunteers of Ireland are therefore summoned to arms*, at the instance of government, as well as by the responsibility attached to your character, and the permanent obligations of your institution; we will not at this day *condescend* to quote authorities for the right of having, and of using arms,—but we will cry aloud in the midst of the *storm raised by the witchcraft of a proclamation*, that to your formation was owing the peace and protection of this island; to your relaxation has been owing its relapse into impotence and insignificance; to your renovation must be owing its future freedom, and its present tranquillity; you are therefore *summoned to arms*, in order to preserve your country in that guarded quiet which may secure it from external hostility, and maintain that internal regimen throughout the land, which superseding *a notorious police, or a suspected militia*, may preserve the blessings of peace, by a vigilant preparation for war. CITIZEN SOLDIERS TO ARMS, take up the shield of freedom, and pledge of peace; the motive and end of your virtuous institution; war, an occasional duty, ought never to be made an occupation; every man should become a soldier in defence of his rights; no man ought to continue a soldier for defending the right of others; the sacrifice of life in the service of our country is a duty *much too honourable to be entrusted to MERCENARIES*; and at this time, when your country has by public authority been declared in danger, we conjure you by your interest, your duty, and your glory, *TO STAND TO YOUR ARMS*, and *in spite of a police, in spite of a fencible militia*, in virtue of two proclamations, to maintain



maintain good order in your vicinage, and tranquillity in Ireland. It is only by the military array of men in whom they confide, whom they have been accustomed to revere as the guardians of domestic peace, the protectors of their liberties and lives, that the present agitation of the people can be stilled, that tumult and licentiousness can be repressed, obedience secured to existing laws, and calm confidence diffused through the public mind, in *the speedy resurrection of a free constitution*," (meaning that the people of Ireland had not at the time of publishing aforesaid a free constitution) "of *liberty and equality*; words which we use for an opportunity of repelling calumny, and of saying, that by liberty, we never understood unlimited freedom; nor by equality, the levelling of property, or the destruction of *subordination*. This is a calumny invented by *that faction, or gang which misrepresents the king to the people, and the people to the king, traduces one half of the nation to cajole the other, and by keeping up distrust and division, wishes to continue the proud arbitrators of the fate of Ireland.*

*LIBERTY* is the exercise of all our rights, natural and political, secured to us and our posterity by a real representation of the people; and *EQUALITY* is the extension of the constituent to the fullest dimensions of the constitution, of the elective franchise to the whole body of the people, to the end that government, which is *collective power*, may be guided by *collective will*; and legislation may originate from public reason, keep pace with public improvement, and terminate in public happiness. *If our constitution be imperfect, nothing but a reform in representation will rectify its abuses; if it be perfect, nothing but the same reform will perpetuate its blessings.* We now address you citizens, for to become citizens you became soldiers;—nor can we help wishing, that *all soldiers*, partaking the passions and interest of the people,



would remember that they were once citizens, *that seduction made them soldiers*, but nature made them men. We address you *without any authority, save that of reason*, and if we obtain the coincidence of public opinion, it is neither by force nor stratagem, for we have no power to terrify, no artifice to cajole; here we sit without *mace or beadle*, neither a mystery, nor a craft, nor a corporation; in four words lies all our power, *UNIVERSAL EMANCIPATION and REPRESENTATIVE LEGISLATURE*. Yet we are confident, that on the pivot of this principle—*a convention, still less a society, less still a single man, will be able first to move, and then to raise the world*. We therefore wish for catholic emancipation without any modification; but still we consider this necessary enfranchisement *as merely the portal to the temple of national freedom*. Wide as the entrance is, wide enough to admit three millions, it is too narrow when compared to the capacity and comprehension of our *beloved principle*, which takes in every individual of the Irish nation, casts an equal eye over the whole island, embraces all that think, and feels for all that suffer; the catholic cause is subordinate to our cause, and included in it, for as United Irishmen, we adhere to no sect but to society, to no creed but christianity, to no party but the whole people. In the sincerity of our hearts do we desire catholic emancipation; *but were it obtained to-morrow, to-morrow would we go on as we do to-day, in the pursuit of that reform which would still be wanting to ratify their liberties as well as our own*. For both those purposes it appears necessary, that provincial conventions should assemble, preparatory to the convention of the protestant people; the delegates of the catholic body are not justified in communicating with individuals, or even bodies of inferior authority, and therefore, an assembly of a similar nature and *organization* is necessary

fary to establish an intercourse of sentiment, and uniformity of conduct; an united cause, and an united nation. If a convention on the one part does not soon follow, and is not soon connected with that on the other, the common cause will split into partial interest, the people will relax into inattention and inertness, the union of affection and exertion will dissolve, and too probably *some local insurrection, instigated by the malignity of our common enemy*, may commit the character, of the nation; this can be avoided only by the influence of an assembly arising from, and assimilated with, the people, and whose spirit may be as it were knit with the soul of the nation. Unless the sense of the protestant people be, on their part, as fairly collected and as judiciously directed, unless exertion consolidates into collective strength, unless the particles unite into a mass, we may perhaps serve some person or some party for a little, but the public not at all. The nation is neither insolent, nor rebellious, nor seditious; while it knows its rights, it is unwilling *to manifest its power*; it would rather supplicate administration to *anticipate revolution* by a well timed reform, and *to save their country in mercy to themselves*.

The 15th of February approaches; a day ever memorable in the annals of this country, as the birth day of new Ireland. Let parochial meetings be held as soon as possible, *let each parish return delegates*, let the sense of Ulster be again declared from Dungan-ron, on a day auspicious to union, peace, and freedom, and the spirit of the North will again become the spirit of the nation. *The civil assembly ought to claim the attendance of the military associations*, and we have addressed you, *citizen soldiers*, on this subject, from the belief, that your body uniting conviction with zeal, and zeal with activity, *may have much influence over your countrymen, your relations, and friends*.

We



We offer only a general outline to the public, and meaning to address Ireland, we presume not at present to fill up the *plan*, or pre-occupy the mode of its execution; we have thought it our duty to speak; *answer us by actions*. You have taken time for consideration; fourteen long years are elapsed since the rise of your associations, and in 1782 did you imagine, that in 1792 this nation would still remain unrepresented? *HOW MANY NATIONS IN THIS INTERVAL HAVE GOTTEN THE START OF IRELAND?* How many of your countrymen have sunk into the grave?" In contempt of our said lord the king, in open violation of the laws of this kingdom, to the evil and pernicious example of all others in the like case offending, and against the peace of our said lord the king, his crown, and dignity.

To this information, Mr Rowan had pleaded NOT GUILTY.

*Att. General.* May it please your lordships, and you gentlemen of the jury—In this cause between the king and Archibald Hamilton Rowan, Esq. it is my duty to prosecute on behalf of the crown. The traverser stands accused by an information filed *ex officio* by the King's Att. General, of publishing a seditious libel. It is my duty to lay the facts of the case before you. It will be the duty of another of his majesty's servants to observe upon the evidence which shall be offered in support of the charge.

I will first state the nature of the charge; next, such circumstances as are necessary to understand and expound that paper, which is charged to be a malicious and seditious libel, calculated to diffuse discontent, jealousies, and suspicions of the king and his government; to raise tumults, to excite the people of this realm by force of arms to overturn the government, and over-awe the legislature, and which is also averred to be "of and concerning the



the government, state, and constitution of this kingdom."

It will be for you to determine on the evidence whether the defendant was the publisher of this paper.

I shall read you the libel, and shall make such observations on it as occur to me to be proper and necessary; but I shall previously state some facts and circumstances deserving of your attention, and in doing this shall carefully avoid touching on any of the many circumstances which these disgraceful times afford, which might induce you to lean improperly to one side or the other. I shall equally avoid any attempt to excite your passions, or bias you from the even track of cool enquiry.

I am happy that this cause is at length come before an impartial jury of this city, and I believe it has long been the desire of every man, that it should be brought to a fair trial before that great constitutional tribunal, which with equal firmness protects the people against the power of the crown, and the constitution from the attacks of sedition. You, gentlemen of the jury, sitting there, not agitated, by the passions, or scared by the turbulence of the times, will coolly determine not only whether the defendant has published this paper, but by that power which the law always gave you, and has lately declared, whether he published it with seditious intentions, or in other words, whether he is criminally guilty of this publication, and whether, on the whole of the case, the libel has a tendency to excite sedition, or produce any one of the effects charged in the information.

In proceeding to state a few facts, I must call your attention to the state and history of the times, about the period of this publication. No man can be too careful in avoiding allusions which ought not to affect this trial, and I am therefore extremely careful,

ful, in this office, which, with pride I say, is as much the office of the people as of the crown, I feel it a more than common duty not to throw your minds from the line which leads to justice.

But in adverting to the history of the times, I am warranted by the authority of a judge now presiding in England, a judge confessedly of as much experience, and as independent a spirit, as ever sat upon a judicial bench.

I allude to the case of the printers of the Morning Chronicle, which warrants me in saying, that it is necessary, in cases of this kind, to advert to the circumstances and history of the times, as they tend to expound the intentions of a paper, and therefore, in that case lord Kenyon observes on the circumstances of the times when the libel in question was published, prefacing his observations with these remarkable words: "I must shut my eyes and ears if I did not believe, &c."\* And I feel myself more warranted in stating this, as the publication now before us issued from a public body, constituted by the name of the United Irishmen of Dublin.

From the restoration of our constitution in 1782, to the time in which this libel appeared, this country had been advancing fast to prosperity with a regular and firm progression. Agriculture was in all our fields, commerce in all our ports; civilization spread over the country, and every thing wore the smiling appearance of happiness; still were we going forward in this enviable track, when the French revolution took place; instantly every man whom a bad mind, distressed situation, or distorted ambition, had rendered inimical to our free constitution, was roused into the hope and the desire of French imitation; clubs were formed in this country, for *im-*  
*proving*

\* Vide the trial of the printer of the Morning Post and others, p. 46.



*proving* the constitution, but under that pretext to destroy it. These clubs at first associated under various names, and in the latter end of 1791, consolidated into one society, that of the United Irishmen. They consisted, in their beginning, of a small number of various classes; some of the learned professions, and some of the lowest mechanics; from their commencement to this day, they have continued to pour upon the public various publications, tending to make the people unhappy, and disaffected with their situation; from this general view of their designs, I shall turn your attention to the particular state of Europe at the period, of which we are now conversant.

In the latter end of 1792, the allied armies had retired from the kingdom of France, the convention of that kingdom began to talk in high language of overturning that kingly government which they themselves had established; not content with this, they threatened all other monarchies; their projects were carried to the extinction of royalty; success seemed to attend their arms, and, forcing through the Austrian Netherlands, they threatened the state of Holland.—Clamour and apprehensions were excited, with no small success, amongst the people here. Emissaries from France spread themselves over all Europe, and their societies here were far from being idle. In Dublin, the metropolis of the kingdom, new *corps* were levied, with new names, new array, and new appearance, to parade your streets, and marshal in your squares. The volunteers of Ireland, that *sacred* name, that name dear to every good man, revered by every true patriot, were disgraced by a banditti, whose name of association proved their intentions, whose title of NATIONAL GUARDS, poorly displayed their wish of imitating the assassins of Paris; unusual uniforms were

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provided;

provided; emblems of the harp, divested of the regal crown, were procured; every thing which could encourage the daring spirit of those whose object was REBELLION. Can any man forget what was the state of Dublin in the months of November and December, 1792? If he does not, he will see how vain is the supposition that the war shook the credit of the country; it was shaken by these bands.

The well-minded were astonished at the supineness, and, what they thought, the weakness of government; but that government, which had never slept over its anxiety for the country, determined not to proceed to extremity, until it should be unavoidable, and until every man should see that it was necessary.

The NATIONAL GUARDS were summoned to assemble; on the 9th day of December were they, armed and clothed like Frenchmen, to have paraded the streets; but on the night before, the privy council was assembled by the lord lieutenant; a proclamation was issued the same night, which produced to all men, that satisfaction which they desired to have; a satisfaction the more grateful, when they felt that government was determined to protect them, and all they held most dear.

On the 9th of December these new corps appaled by this decisive effort of government, did not appear; a few indeed paraded the streets without arms, followed by admiring crowds; they were seen once, but, blessed be God, they were seen no more.

This proclamation, so happy in its effects, received the approbation of all the great and all the good, the lovers of order, property, and religion, of all who were not lost to every sense of loyalty and virtue; it naturally became an object of indignation and abhorrence, with this society of United Irishmen, and those who adopted their principles.

And



And here; when I speak of this society, let me say, without being supposed to make any apology for what I have said already, that men of every description have been industriously picked up to lend their names to this society, men have been sought in lanes and corners, in streets and markets; the manufacturer has been inveigled from his loom, and the innocent grazier from the booth, to give currency to their publications.

A few days after this proclamation the society assembled, the precise time I cannot ascertain, but the proclamation was issued on the 8th, and the libel in question was published on the 16th, therefore the meeting must have been in that short interval.

The society, I say, then assembled, and agreed upon a certain address to the volunteers of Ireland, Dr *Drenan* in the *chair*, and the traverser at the bar *secretary*. This address is the libel now before you, with the publication of which the traverser is charged in the information. By this address the Volunteers of Dublin were to be called into action, and for this it was necessary that it should be dispersed amongst them. To accomplish that object, the Volunteers were summoned to meet at the house of one Pardon a fencing master in Cope-street, on the 16th of December.

In consequence, several corps did go to the fencing school upon that day; the defendants headed one, another very celebrated name was at the head of another, J. N. TANDY; who commanded the others I am not able to inform you, but this I can say, that they were in all about one hundred assembled in arms.

In this fencing school there is a gallery, and into that gallery, (to such excess did they carry their designs) many auditors and spectators were admitted, so that what passed below, passed almost in the face of the world; and if any part of my statement be not true, multitudes may be found to disprove it.

A table stood in the middle of the room, a vast bundle of printed papers was brought in and placed upon it. The different corps entered into resolutions, and taking into their wise considerations the propriety of the proclamation, resolved their several sentiments of disapprobation, and published them in the news papers of the next day; so that it must appear evident that they were brought together for a state purpose, and to debate a state matter.

While this was going forward, Mr Tandy and the traverser took the papers from the table, and dispersed them amongst the volunteers around, and even to the people in the gallery, to any person who offered or pleased to take them, without the least idea of any sort of *confidence*, if confidence could be expected in such a business. The windows were opened, and several of the papers thrown into the street to the mob whom curiosity led to the door.

It will be for you gentlemen to consider, for what purpose these papers were thus published and dispersed.

If you consider the publication, for it is the same which is now in question, as merely a cool complaint upon a constitutional subject, for a constitutional purpose, stating grievances for redress, you will certainly not consider it a crime in a man, to have fairly and calmly laid his sentiments before the world.

But if you are convinced that his object must have been to raise general discontent, to stir up the people to sedition, for the purpose of over-awing the legislature, I trust you will prove with what detestation you feel such a design.

You will take that paper into the jury room with you, and considering it abstractedly from any conversation you may have ever heard abroad on the subject, you will examine its tendency and determine your opinion upon oath.

In



In that paper, the ingenuity of the most ingenious, and he (Mr Curran) who is to defend the traverser, is truly so, will not find any thing to warrant him in telling you, that those which I have mentioned are not its obvious designs.

And this brings me to the libel itself, which I shall read to you, and make such observations upon as may occur to me.

(Here the Attorney General began to read the paper, which as it is already set out, we will only refer to by some few words of each passage.)

"*Citizen Soldiers.*" Language that at starting excites ideas that cannot but be disagreeable, and such language shall we see throughout; the frippery of French expression, a stile which must disgust every man who regards character, religion, morality, or justice. "*It is necessary you should resume them,*" What! the society of United Irishmen who say they are no corporation, yet have a corporate seal, dictating to the Volunteers of Ireland.

"*Proclamation.*" You see, gentlemen, that this paper has for its object the proclamation I have mentioned.

"*Drawn through the streets.*" Alluding, gentlemen, to some cannon which had been brought into the city for its protection, against the danger which every man apprehended.

"*Internal commotion.*" A charge upon the government, of endeavouring to create internal commotion, for the purpose of shaking the national credit.

"*Hitherto inviolate.*" Did the proclamation forbidding seditious associations, violate the honour of those glorious *Volunteers* who did so much for their country! 'tis too ridiculous.

This is the first part of this abominable and seditious paper. It then goes on,

"*You*

“*You Volunteers of Ireland*” A few corps meeting in a fencing school in Cope-street.

“*To arms*” Here is a call to arms to the Volunteers, whose honour they have just said was violated, and whose assemblies they assert are forbidden, and yet they tell them, that the proclamation has called to arms. Such is the inconsistency of this bombastic and gross piece of nonsense when it is intelligible.

“*The right of using arms*” Who had called this right in question? Was it because they were forbidden to use them to the destruction of the people?

“*The witchcraft of a proclamation*” Is not this a scandalous charge against government, that government was raising a storm by the very act which proved their intention of allaying it?

“*Summoned to arms*” Summoned by the society of United Irishmen.

“*Suspected militia*” Here is an endeavour, not only to render odious establishments already formed, but to anticipate by popular disgust, a measure which they well knew was in contemplation, because they knew it would render their machinations vain, and preserve the constitution.

“*Mercenaries*” The police, established in the different counties to preserve the peace, is first reviled, the intended militia is next scandalized, and now, the king’s army is declared unworthy of being entrusted with the defence of the nation.

“*And in spite of*” Not only foreign and domestic enemies, but the legal establishments of the country are to be opposed by arms.

“*Liberty and equality*” This will explain to the plainest man in the hall, what they mean by the “*resurrection of the constitution.*” Is the constitution dead? or do they desire another “*liberty and equality!*” it is painful to observe upon these words; their



their extent is dreadful, and must produce the most heart-rending sentiments to every feeling man in the kingdom; there is no man who does not love liberty, but these words are intended to cajole the vulgar, and destroy that liberty which we so happily possess, and which is the envy of Europe.

But this society well knows the meaning of these words, and earnestly desire their effect.

“*That gang or faction*” Need I observe who are intended by these words?

Now follows *their* definition of liberty, if it suits any gentleman, in God’s name let him take it for himself, it suits not me.

“*Collective will, &c.*” Certainly this sentence is very sonorous, and very fine to the ear, but what is it intended to convey? That government is to be conducted by the will of every man in the state, that the people shall govern the people; *how* they do it, we have, happily for ourselves, seen in its full extent.

The next sentence, I confess, I cannot understand, do you gentlemen try if you can.

“*If our constitution be imperfect*” This is the strangest reasoning I have ever heard.

“*Seduction made them soldiers*” How will my learned friend tell you, when he comes to shew you the innocence of this publication, intended only to seek a parliamentary reform, that it is not seditious to inform the soldiery that they are mercenaries, that their situation is dishonourable, and that seduction made them so.

“*Without mace or seal*” It is not hard to tell what this alludes to.

“*Universal emancipation and representative legislation*” In these four words lies all the power of the society of United Irishmen.

By the first words it appears, that they desire to extend the right of voting to every man in the kingdom.

kingdom. The meaning of the latter are but too obvious. The constitution is often in the mouths of men when its destruction is in their hearts.—Where is your king? where is your house of peers? when the words of their power, their “representative legislation” is carried into effect, they would be buried under the anarchy and confusion which this society wishes to produce.

If the context shews any other meaning, I am to be corrected by you, gentlemen, you will see whether it bears my construction; you will decide upon the intention—as appearing to any ordinary person, who reads the whole: “the pivot of this principle,” the four words “raise the world,” the meaning of this is not quite so clear—if it has any it is that a society is less than a convention, and a single man still less than a society, their “beloved principle,” the four words, “organization” still French language, coupled with French ideas.

“*Common enemy*,” the meaning of these words I leave you to judge, “collective strength,” “manifest its power.”

Gentlemen, part of the object avowed by this address to the volunteers, is to obtain emancipation for our Roman catholic brethren. Was this then a reason to operate upon parliament to vaunt the power of the people? Was it necessary, in order to obtain cool deliberation, that the people should be called on to exercise that power——“parochial meetings?” In this paragraph we have a sketch of the new French constitution.

Mark the next sentence. It will tell you their designs more plainly than I can relate them.

“Should demand the attendance of the military.”

Here is the society of United Irishmen raising its voice to call the people to support the government; but how?—by a convention like that of France, to be



be assembled in the country, with a military force under its controul. This speaks the truth, and if the libel were drawn with much more art than it is, still this design would tell its intent. What is it but that by a manifesto under the great seal of the society of United Irishmen, a convention should be assembled for the purpose of producing "universal emancipation, and representative legislation," for the purpose of over-awing the king, lords, and commons of the nation; to approach the constituted powers of the country, not to look for happiness to the community, but to excite discord and confusion.

He who looks for perfect happiness, looks for what he never can attain; he who speaks of perfection in any human system, blasphemes his Maker; for if we could have it, would we not have seen some instance of it since the beginning of the world?

But even if it did exist, the means adopted by these societies would never bring us near it; we should only lose all we possessed in confusion, misery and anarchy, to attain a government of tyranny and oppression. "Plan" for carrying into execution the four words.

"Answer us by *actions*," now for a little eloquence.

"How many nations have got the start of Ireland? how many of our countrymen sunk into the grave?"

I do not really pretend to know what this means, if it be not the revolution in France; if it be France which has the start of us, I trust in God she will long have it, and all other countries have my free consent to get it and keep it if they can.

I have thus read this paper to you; whether it be or be not a seditious libel is solely your province to determine.

The great and peculiar blessing of our constitution is the TRIAL BY JURY. In France, held up by  
D madmen

madmen for our imitation, that trial does not exist; and the grand preservative of our constitution, and of that trial, is the FREEDOM OF THE PREES.—Of that you are the guardians, you are to decide on all questions touching that freedom; by you only can it be destroyed, and in but two ways; and when it is destroyed, so is our constitution.

It can only be destroyed by the over-weening power of the crown, or by the licentiousness of printers, corrupting the minds of the people, and producing another, but not less oppressive tyranny: to both and either of these must juries be accessory.

The press should therefore be left open to free discussion, and whenever it is necessary to control it, it is your province to step in, and when you protect it from either danger, you protect your constitution, your liberties, and your lives.

But whenever the licentiousness of the press shall be sanctioned by the timidity of a jury, then will its freedom be destroyed.

In this instance we have before us a paper threatening government, and assuming to overawe the legislature. If such be its tendency, shall it be sanctioned by your verdict? If it is, the freedom of the press is destroyed, and its own licentiousness gives the mortal stab. But if you think it is not intended for those purposes if it only states grievances which it is necessary the country should understand, and does not design to excite tumult, terror, and confusion; if it is a cool dispassionate paper, reasoning with the people for their advantage; if such be your opinion of it, the defendant must be acquitted.

As to the fact of publication, we shall prove it by a person who received the paper from his hands, while others were distributed from the table in the room.

The



The paper itself states, that Mr Rowan was secretary of this society; and if, as I am instructed, the facts I have mentioned are proved, his publication of the paper was an acknowledgement of the truth of this statement; so that he is not only guilty of the publication at Cope-street, but of the dissemination of the libel through the whole kingdom.

Such is the case as it appears to me. I will not anticipate what may be said on the other side; many topics may be introduced not connected with the present subject. The old volunteers will be spoken of, and they can only be spoken of to excite your noblest feelings. Let us suppose for a moment that this paper was addressed to the old volunteers, what then is its tendency? To excite them to deeds which every action of their existence proves they abhorred. It will be said, that the proclamation, to which this country owes so much, was directed against the old volunteers. But in fact the history disapproves it, and the persons designed by it were most accurately described by the very words of the proclamation. In what did these new levies resemble the ancient volunteers?

Were the latter assembled by the mandate of the society of United Irishmen in Backlane? No—the spirit of the nation called them forth; the king's representative called them forth to defend the country, the royal arsenal furnished them with arms, they were employed to strengthen government and guard the constitution.

How did these new ones resemble them? were they of this description?—the black cockade, the royal emblem, changed for the green, and none admitted without renouncing the one for the other. Is this the similitude?

Another topic upon which much will be said, will be the law lately passed relative to libels. I am not

aware that it was wanting in this country; the law had always been the same here; the provisions of this new act have long been the established law of Ireland; by it you have a right to enter into the guilt or innocence of the publication;—so that you are the sworn judges not only of the fact, but the intention of the fact;—and in this the declaratory law of last session has made no alteration.

I feel, gentlemen of the jury, that I have detained you long. It was perhaps necessary. I shall conclude by reminding you, that by your verdict you will vindicate the freedom of the press, or punish its licentiousness.

*Prime Serjeant.* Call John Lyster, Esq.

John Lyster, Esq. sworn.

Examined by Mr Prime Serjeant.

I recollect the 16th of December, 1792. I was at the house of one Pardon in Cope-street on that day. There was a crowded assembly there of from 100 to 150 persons. They were in uniform, with side arms. There was a table in the middle of the room. Mr Hamilton Rowan and Mr Napper Tandy were there. I know Mr Rowan's person.

*Lord Clonmel.* Do you know him now?

That is the gentleman (pointing to Mr Rowan) opposite me. It was merely curiosity brought me into the room, I happened to be passing through the street in company with my brother, the croud about the door attracted me, I asked what was the matter? I was told it was a meeting of the United Irishmen; we went in; we were in coloured clothes, Mr Rowan, to the best of my recollection, came up and said, no gentlemen in coloured clothes could be there, but that there was a gallery for them. I perceived Mr Hamilton Rowan to be very busy about the table, he had papers in his hand; I did not see a pen and  
ink



ink upon the table; I saw him walk about the Room with papers in his hand; he stood up at the end of the room, Napper Tandy was with him, Mr Rowan read part of the paper. Several gentlemen in uniform handed the papers up to the gallery, they were handed by Hamilton Rowan to different people about him, and from him to the gallery. This, (shewing a paper) was one of a parcel of them, which Hamilton Rowan gave some others to hand up into the gallery; my brother got one also, there were about 30 thrown up into the gallery, I put my name upon this one, it is the identical paper, I made this memorandum on it.

(Reads) "I got this paper the 16th of December, 1792, at a meeting of the United Irishmen, in Cope street on that day; it came from the hands of Mr Hamilton Rowan."

The words of this paper were read by Mr Rowan.

Mr Justice *Downs*. Do you say you are positive they are the same words?

I cannot say he finished the whole paper, but I am certain he read part of it.

Cross examined by the Recorder.

Q. What time did you go into this place?

A. About one or two in the afternoon, of the 16th of December, it was on a Sunday.

Q. How long did you remain there?

A. About three quarters of an hour.

Q. How many persons were there present?

A. Between one and two hundred volunteers.

Q. Were they in old volunteers uniform?

A. I believe they were, I cannot say, several of them had green facings.

Q. Do not you believe that some of the old corps had such facings?

A. I believe they had.

Q. What

Q. What was the general colour of their uniforms?

A. They were in general scarlet, with different facings.

Q. What were those volunteers doing.

A. They were mostly walking up and down the room.

Q. Were there any forms or chairs in the room?

A. Very few; the volunteers were walking and conversing with each other. I saw a good many go up to the table in the course of their walking backwards and forwards. I saw four or five of them take papers off the table and read them, and hand them about from one to the other.

Q. By the virtue of your oath, did you ever see that individual paper now in your hands, in the hands of Mr Rowan?

A. I do declare it was in the parcel handed from him by another person, I cannot say his fingers actually touched it.

Q. Who was the person you mention?

A. It was one of the volunteers, or United Irishmen there.

Q. How many hands did it pass through before it came to you?

A. I believe through more than one, I saw it handed from one to another through four or five, before it got to the gallery.

Q. Can you name any one of those persons?

A. I do not know the name of any one of them; I was not so well acquainted with the gentlemen.

Q. How are you sure that *that* paper was in the parcel which came from Mr Rowan?

A. The parcel was broken into separate parts, and I put out my hand and got three or four, there were  
a great



a great many persons in the gallery, any one who chose might have got one.

Q. How are you sure that this is the paper you got that day?

A. I never parted with it, I have kept it ever since until yesterday.

Q. Did you know any person present but Mr Rowan?

A. Yes, there was Napper Tandy, and a Mr Kelly whom I recollect, Kelly is a shop-keeper.

Q. How many persons were there who handed papers to the gallery?

A. I dare say there were several.

Q. How many took papers off the table?

A. Several.

Q. How then can you say that this particular paper came from Mr Rowan?

A. I saw it pass through several hands with the rest of the parcel, I saw its particular progress from Mr Rowan?

Q. When did you put that written memorandum on it, and where?

A. The very day I got it, in my own lodging.

Q. Why did you do so? who advised you?

A. Nobody advised me, I always do so when I get papers which I think improper, it is a fancy of my own.

Q. Now, Sir, was it not to enable you to prove it upon a prosecution?

A. It was not.

Q. How then does it happen, that you are brought here to do so?

A. I will tell you, Counsellor.—My brother did business for the late Mr Adderly; after his death he and I went to Major Hobart to settle some accounts, we were referred to Mr Pollock, Mr Adderly's agent,

gent, this was after the business in Cope-street, Mr Pollock said to me, he had heard that my brother and I had been at a very improper meeting in Cope-street; I said we had been there, and shewed him the paper I had got; he desired me to put my ideas on paper, and make examinations of the fact, that it was a duty I owed my king and country. I was willing to render my king and country any service in my power.

*Recorder.* Well, Sir?

*Lyster.* The next day Mr Kemmis came to me, I told him I was willing to communicate what I knew to him, and would make an information of it.

*Recorder.* Mr Kemmis is the Crown Solicitor?

*Lyster.* He is.

Q. Pray, Sir, of what particular profession were you at the time of that meeting?

A. I was of no particular profession.

Q. Pray, Sir, of what profession are you now?

A. I have the honour to be in the army.

Q. What commission, and how long?

A. I have an ensign's commission, I have been gazetted since the 27th of June last.

Q. You have sworn to that paper having been read by Mr Rowan, how much of it did he read?

A. He read the greater part of it.

Q. To whom did he read it?

A. To the volunteers, who were walking about, and some standing about where he and Napper Tandy were.

Q. Can you point out what part he read?

A. It was the beginning.

[Reads, " Citizen soldiers, &c.

Q. Where did he end?

A. I cannot tell exactly.

Q. Pray,



Q. Pray, Sir, how did you obtain your commission?

A. By the interest of a lady, to whom I have the honour to be related, lady Hobart is my aunt.

Q. Do you recollect ever having been a witness to a bond which was afterwards the subject of a suit?

A. I was witness to two bonds executed by my father to one of my brothers, my younger brother; there was a suit.

Q. Was there not a suit or an issue to try whether it was your father's bond or not?

A. There was a suit. I'll tell you how it was. My elder brother wanted to keep my younger brother out of the property, and denied that the bond was true. I am sorry to say any thing of it, but since you speak of it I must. My father passed several bonds to me and my brothers, and afterwards filed bills against us to set them aside, in which he did not succeed; for Mr Simon Butler, like a very honourable gentleman, undertook the suit for us and recovered it. There is a Mr Blake, whom I just now heard is to be here, and a Mr Lyfter, that I would have subpoenaed, if I had known this would be brought up; they can tell that it is as I have said.

Q. Pray, was there not a trial in the country?

A. There was.

Q. Were you a witness?

A. I believe I was. I am sure I was.

Q. Were you examined on the trial?

A. I was a witness to the bond.—I know I was to have been examined. My elder brother cried out to the jury in the middle of the trial, that he would leave it to a reference, and it went no farther.

Q. You have not yet answered me, whether you were examined or not?

A. I know I was to have been examined. I cannot

E

not

not swear positively whether I was or not, to the best of my recollection I was.

Q. Why, sir, how long is it ago?

A. I cannot exactly say.

Q. Is it two, or three, or four years?

A. 'Tis more than three years ago.

Q. And you cannot say what happened so short a time ago?

A. I cannot, nor will not swear whether I was or was not sworn; to the best of my belief I was.

Q. Who was this tried before?

A. Before one of their lordships (Mr Justice Boyd.)

Q. Pray, did not some witnesses swear that it was not your father's bond?

A. I do not know that any person did.

Q. What was the verdict upon it?

A. There was no verdict at all, my elder brother saw he was doing wrong, and begged it might be left to a reference; my younger brother was unwilling to do so, but at last consented; there was a reference, as I am told.

Q. What was the result of it?

A. I do not know. I hear something was awarded to my younger brother, but people thought the referees were wrong; it is not yet finally decided. It is not the first brother or father that has impeached the right of their son or brother; many a suit have I heard in these courts about such things.

Q. How much was awarded to your brother?

A. Some hundreds. I don't know exactly how much, I was to get none of it.

Q. Pray, was there not a bill filed against you by a Mr Lambert?

A. Yes, Mr Walter Lambert filed a bill against me, as executor of Mr Peter Hamilton.

Q. How did that happen?

A. I was sent to attend Mr Hamilton who was my



my brother-in-law; it was at a time when I had no support from my father; I thought Mr Hamilton's relations should bear my expences; he was in a mad house near Bristol; I brought him over here; when he came over, he passed me his note for 147l.—he was then in his lucid intervals; I went to judge Kelly, his relation, about it.

Mr Lambert is his executor, and will not pay me now. They never said the note was not Hamilton's hand-writing.

Q. Did you recover the money?

A. I never did, it is now in chancery.

Q. Pray, is there not an injunction bill against you?

A. I never heard there was. I was nonsuited at law by the neglect of my attorney, a Mr Morton, who left my papers in town, when he should have had them at the assizes. Mr Hamilton was perfectly in his senses when he passed the note, he transacted all his own business at that time.

Q. How long did he live after this?

A. He might have lived many years longer had he not shot himself.

Question by one of the jury. Were they all the same sort of papers which were handed up to you?

A. There was no sort of difference between any of them.

Mr William Morton, examined by the Solicitor General.

I was in Cope-street, on the 16th of December, 1792, I saw a number of men assembled there in military dress, they transacted some business, and drew up some resolutions at a table in the room. I saw Mr Hamilton Rowan there at the table, and Napper Tandy also. I know Mr Rowan by sight, there he is, [pointing out Mr Rowan] he appeared to take an active part in the business of the meeting.

I had gained admission into the gallery of the room where the people were assembling. I saw a large number of papers or advertisements come in, they seemed to be fresh from the press, for they were damp; some of them were laid on the table, some were given to Napper Tandy; I saw some of them myself, and read them; I saw some taken by Mr Rowan, and delivered to some members, who threw them up to the gallery where I was, I took one out of the hands of a man who sat by me, one of them was taken, and read by a young gentleman, who read remarkably well; some of them were thrown out of a window to the mob in the street, who cried out for more, which were sent to them accordingly. I heard the people cry out for them, others heard it too, in consequence some were sent out to them. I kept one of the papers, and gave it to a person, who, as I understand, has since mislaid it. I recollect the beginning of one paragraph, "Citizens to arms" When I heard it read, that passage made an impression upon me; it was read by the young gentleman in the gallery.

Cross examined by Mr Fletcher.

Q. Pray, Sir, what trade or business do you follow?

A. I am an apprentice to a gold-beater, now serving my time.

Q. Is your father living?

A. No, Sir,

Q. Pray, how came you to be in this fencing room on the 16th of December?

A. It was on a Sunday when I was unemployed, I went there with another person who asked me to go; I went chiefly through curiosity.

Q. What hour of the day was this?

A. Sometime between eleven and one, about noon.

Q. What uniforms did these persons wear?

A. In



A. In general scarlet with green facings, there were some light infantry and some battalion.

Q. Pray, were not those the dresses of the old volunteers?

A. I should suppose they were.

Q. Do you not believe it?

A. I do believe it.

Q. What part of this room were you in?

A. In the gallery.

Q. How much of these papers did you see come in?

A. I saw but one bundle I think.

Q. Pray, Sir, did you see any body else take any papers off the table, but those you have mentioned?

A. I will tell you, Sir. I was high up in the gallery, there is a beam across the room which prevented my seeing more than half of the table, I therefore cannot say what was done at the rest of it.

Q. Did you see Mr Rowan take any papers off the table?

A. I cannot say that he took them off the table, he took part of them as they came in, the members gathered round him and asked him for some of them, which he gave to them.

Q. Now, sir, let me ask you, did you see Mr Rowan send any papers to the gallery?

A. When the papers came in, some were taken by Mr Rowan, some by Mr Tandy, they were delivered by them to the volunteers, some of whom threw them up into the gallery; one part of them was laid on the table.

Q. Why, sir, you said you could not see the table?

A. I could see part of it.

Q. What were the volunteers doing all this time?

A. They were walking up and down the room.

Q. Did

Q. Did you see every person who went near the table?

A. I could not ; the whole table was not in my view, it was a pretty large table.

Q. Can you tell me the name of any person through whom these papers passed to the gallery?

A. I do not know any of them.

Q. What was the gentleman's name who read so well in the gallery?

A. I do not know.

Q. What part of the paper did he stop at? did he finish it? did he read it more than once?

A. I cannot tell.

Q. How do you know then what it was he read?

A. I had one of the papers in my hand the whole time.

Q. How long did you keep the paper after this?

A. A short time.

Q. What do you mean by a short time? was it less than a week?

A. It was.

Q. To whom did you part with it?

A. I gave it to Mr Giffard.

*Sheriff Giffard.* He gave it to me.

Q. Had you any particular reason for giving it to Mr Giffard?

A. He was the first person I met with.

Q. Why, sir, did you meet nobody for a week after, till you saw Mr Giffard?

A. It was the same day I saw him, as I came away from Cope-street.

Q. And now, sir, by virtue of your oath did you mean to convey to me, when you said it was less than a week,—that it was the very same day?

A. I did.

Q. What time of the day was this business in Cope-street begun?

A. It



A. It was about the forenoon.

Q. What time did the assembly break up?

A. I cannot say exactly; I stayed till it happened.

Q. Cannot you guess about the time?

A. I believe it might be between 3 and 4 in the afternoon.

Q. What time were the papers distributed?

A. About half the time of the assembly had elapsed.

Q. Where did you go when the assembly broke up?

A. To Mr Ryan's, a relation of mine.

Q. Had you any conversation with him about the paper?

A. I had not; I met Mr Giffard at Ryan's house.

Q. Did you expect to meet him there?

A. I did not.

Q. Who is Mr Ryan?

A. He is a surgeon.

Q. Does he follow any other business than that of a surgeon?

A. I do not know.

Q. Does he not live where the Dublin Journal is conducted?

A. He does.

Q. Don't you believe he has something to say to that paper?

A. I believe he has.

Q. Is he not the printer of that paper?

A. Mr Faulkner, I believe, is the printer, at least he is said to be the printer and proprietor.

Q. Do you know whether Mr Faulkner really conducts it?

A. I do not know.

Q. Do you know whether Mr Giffard has any interest in that paper?

A. I do not know.

Q. Do you believe it? cannot you form a belief?

A. I

A. I have heard it. I do not believe it. I have heard it from strangers.

Q. Did you ever hear it contradicted?

A. I have.

Q. Pray, Sir, how are you connected with Mr Giffard?

A. I am his nephew.

Q. And you can't tell whether he has any interest in that paper? What relation is Mr Ryan to Mr Giffard?

A. I can't tell. I don't know.

The evidence for the crown closed here.

The paper was then read.

*Recorder.* My lord, we shall trouble the court with only one witness. Call Francis Blake, Esq.

Lord *Clonmel.* Would you not wish, Mr Recorder, to have the paper read, with the information?

*Recorder.* My lord, we are instructed not to take advantage of any variance which may happen; it is my client's wish to meet the verdict fairly.

*Attorney General.* There is a good reason for it; there is no variance.

Francis Blake, Esq. examined by Mr Curran.

I live in the city of Dublin. I did live in the county of Roscommon. I have an house there. I know John Lyfter, who was examined here to day, he is son to Thomas Lyfter of Grange.

Lord *Clonmel.* Did you see him here to day?

*Attorney General.* My lord, we admit that he is the person.

Mr *Blake.* I never had any dealings with him. I cannot form a judgment as to his credit.

Mr *Curran.* I ask merely your opinion, not any fact.

Lord *Clonmel.* The question you are to answer is, do you think him a person to be believed on his oath?

Mr



*Mr Blake.* I might hesitate : I cannot say he should not be believed.

*Mr Curran.* I wish you would form an opinion, Sir.

*Mr Blake.* I have made all the answer I can. I cannot say I would not believe a man's evidence. I am certain of no particular fact to form an opinion, but I might hesitate.

*Mr Curran.* Good God, Sir, sure you can give a general opinion ?

*Mr Blake.* I cannot answer the question in any other manner.

*Mr John Smith* sworn and examined by the Recorder.

I know John Lyfter ; he is son of Thomas Lyfter of Grange. I have seen him. I heard him examined at the assizes of Galway in the summer of 1791, as a witness. I only know his person. I think I saw him here to day, as I stood on the Exchequer steps. I cannot form a general opinion as to his credit, but from the little I know of him, I would give him very little credit.

*Recorder.* Do you know his general character ?

*Attorney General.* I object to this question being put, it is not a legal one.

*Lord Clonmel.* I will endeavour to satisfy you both. Mr Smith, you are a man of the world, a man of business, and a man of experience.—On your oath, do you know enough of that man, to form an opinion whether he should be believed or not ?

*Mr Smith.* I cannot. I have not, my lord.

*Attorney General.* I wish to know, Mr Smith, are you a member of the United Irishmen ?

*Mr Smith.* I am not.

*Mary Harchel* sworn.

I know John Lyfter, he is an ensign in the 40th regiment. I have known him well something long-

er than a year, by eye-sight longer; according to my opinion he should not be credited on his oath.

Cross examined by the *Solicitor General*.

Q. Where do you live, madam?

A. On upper Ormond-quay.

Q. I fear, Madam, that there is something painful to your mind in the recollection, you seem to feel unpleasantly upon the subjects, pray what are your reasons for this opinion? do you know any thing of Mr Lyster's family?

A. A brother of his, Mr George Lyster married a daughter of ours, he is younger than John, he is in the 41st regiment. My knowledge of John arises from this connection; my daughter is married to George William Fitzgerald Lyster.

Q. Was it with your consent, madam?

A. It was not.

Q. Then, madam, I am to understand, that your opinion of John Lyster is grounded on this marriage of his brother?

A. No, Sir, but John found means, by expressions he made use of, to inveigle his brother from his wife.

Q. I am very sorry to have revived these painful recollections. I have done.

Lord *Clonmel*. Is that your only reason for your opinion, madam?

A. It is one; the other is words which I heard his elder brother make use of in my hearing.

Dennis Couloughan was called, but did not appear.

Mr *Curran*, for the Defendant.

When I consider the time at which this prosecution is brought forward, the array of legal ability with which it is supported, when I catch the throb of public anxiety, which beats from one end to the other of this hall, when I see the unusual safeguard resorted to, certainly to preserve decorum and order—when I reflect on what may be the fate of the prosecution



prosecution with respect to a man of the most honourable family—when I feel that he is the only man of that family, who has his mind unagitated—when I perceive that this is a contest between the Crown and the Subject, my heart is far from being at ease.

Here Mr Curran was interrupted by a noise in the outer Court\*.

Lord *Clonmel*.—What noise is that?

Counsellor *B. Bagnet Harvey*. My lord, a lawyer has been struck by a soldier in the hall.

Counsellor *Lynch*†, (from the outer hall) I trust your lordship will protect the Bar, they are in danger of their lives here.

Lord *Clonmel*.—I certainly shall protect both their lives and their healths. Mr Sheriff, see that the court without be kept quiet.

Mr *Curran* in continuation:

I say, gentlemen of the Jury, I never rose with more embarrassment in my life, than I do upon this occasion. If I could suppose that you could come into that box, with your minds unimpressed by the strange vicissitudes of human events, I should form a bad opinion of your hearts; but I have a right to call upon you in the name of the living God, to discharge your minds as much as you can of any such impressions, that if my client has trespassed, you may tranquillize the public mind by a firm verdict of *Guilty*; or, if he should be innocent, by as firm a verdict of acquittal, despising the tumult of artifice and terror which is raised around you; and I know it is the more necessary to put you thus upon your guard, from the statement which you

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have

\* The crouds of auditors had been so great in the beginning of the day, that it was not possible for the witnesses on either side to get into court; the sheriffs, were therefore, obliged to protect the court with a military guard, in addition to the civil power.

† Mr *Lynch* was the first Roman Catholic called, under the late act of parliament.

have heard from the great and excellent man who has advised, and now conducts this prosecution; I know him in private life, and I know what lodgement he can make upon the heart, and with what weight every observation comes from him: I know that he disdains to impose upon you by the trappings of his office, but I know what a strong hold he will take of your minds, from the imposition of his character.

To give your minds time to cool there, I shall for a moment leave observation, and come to the calmness of fact.

And here let me mention, that I have it in charge from my client, not to make any objection of a legal kind, by which he could avoid a fair and open trial.

In the month of December 1792, Mr Rowan was arrested in the streets of Dublin, on an information charging him with the fact now alledged; he was taken before an honourable person, who is now upon that bench; he was admitted to bail; for a long time did he solicit a trial, he was not indulged, it was not thought proper to put it forward in the usual way, by indictment. An information was filed against him. I do not pretend to say that informations are against law, or that they are oppressive in their nature, but I do say, that, when a Petit Jury is brought to try a fact, before a Grand Jury has found a bill of indictment, the accusation comes with a weakness of proof which it is difficult to assist, and the reason is founded on the general law of the land, "that two entire juries shall concur in finding a man guilty of a crime." The Grand Jury enquires into the probability of the fact, and the Petit Jury is to pass upon that which the Grand Jury have upon their oaths thought to be probable. Besides, gentlemen of the jury, my client would have had



had another advantage, he would have been tried at the next Commission, after the bills were found.

But his trial, though often solicited, was not brought forward. As the time approached for the information to be tried, it was suggested by the counsel for the prosecution, that some error appeared in the record; a new one was filed on the 8th of July, and my client's former recognizance was withdrawn.

Gentlemen of the Jury, if part of the question was, whether my client is pursued as a criminal, or as a victim, I should not abuse my hearers by circuitously stating it; but I will say, that it was necessary to postpone this trial, to give some time for the public mind to be heated by the terror of French principles, to extend that unfortunate delusion which was so general, but which we have found to be delusion. I have myself been stopped in the street with, "Good God, sir, have you heard this dreadful news?" "No, what is it?" "Two French emissaries travelled through Connaught in a post-chaise, throwing papers out of the windows, and two others have been heard haranguing in the French language, and exciting our illiterate peasantry to rebellion!" These are the artifices which are made use of when a victim is to be sacrificed; you cannot shut your ears to this question, has there been a conspiracy to hunt down a victim, or is this a prosecution for great and good public purposes?

Gentlemen, this is not a trial for a private libel. —I know no case in which a jury should be more cautious, than in preventing the Press, which is a vehicle of good, from being perverted to bad purposes.

But in this case, you stand between the Crown and the Subject.

The principle upon which every government should

should hope to rule, is that great one: *The good of the people.* The British constitution is founded on this basis, and in this transcends every other in Europe. This object, and the free consent and general will of the people, are the foundation of the government of Great Britain; and from this, the people have a right by immemorial custom recognized by many acts of parliament, to see that their properties and liberties are attended to as they ought.

This is a subject which I feel abashed, when I come to observe upon; there are sacred, and holy principles, which should not be bared to popular observation; like the foundations of a great building, you can scarce examine their construction, without impairing their strength, but if I must do it, let it be remembered, that it should not be imputed to me, or my client, we have not desired their investigation.

To secure to the people this right of watching over the acts of government, is the freedom of the Press established, and it behoves you, its guardians, to prevent that press from being either prostituted by personal defamation, or disgraced by indiscriminate abuse of government, for the repetition of false accusations destroys its future credit. When it tries the tree by its fruits, the motives of government by their effects, then does the press obtain credit; but by perpetual accusation, far from begetting distrust, it begets in the people a security which is not deserved by government.

In the law respecting the press, there has been of late a change, which I think right to impress upon you.

Within the last twenty or thirty years, the judges in Westminster-Hall had taken upon themselves to try the question of libel, or not, as matter of law. The late law takes away that power; under the authority of that law, you will listen to whatever advice



vice the bench may offer to you, but you will recollect that you are not to submit to it implicitly, but only so far as it may meet your own understandings.

Having thus stated the law, I will state the charge as it stands upon the record.

That A. H. Rowan being of a wicked and turbulent disposition, &c. did publish the thing asserted to be a libel.

Here, gentlemen, you must see that the information contains a direct charge against my client, that with a certain intent, he did a certain act; this intent you must find upon your oaths, or acquit him. There are in fact, three questions for you to decide upon: first, the matter of fact of publication; if he did not publish it, there is no further question on which your minds can be employed: If you think he did, then arises the great and important enquiry, whether it is a libel? which may be summed up, by trying your minds by the several charges in the information, and after all this, there still remains a final and governing question, whether the paper was published with the *intentions* laid in the information?

As to the question of his having been the writer of it, their lordships will tell you that it is not before you.

If you cannot, on your oaths, say that he published it, if you cannot say that it is a libel, or if you cannot say that he published it with the intentions charged, my client is in justice entitled to a verdict of an acquittal.

The Attorney General was right in directing your attention to the surrounding state of public affairs, and the history of the time when this paper was published; but let me turn your minds to a point but slightly taken notice of by him.

Towards the close of the American war, when France had joined our enemies, when not a single regular

regular soldier was to be found in the country, and every heart old and young trembled at the danger of our invasion; as if the hand of Providence had interfered to save us from calamity, we saw men of the greatest wealth and importance in the state, come forward to protect the private and the public tranquillity; you cannot look back without recollecting with pleasure, the time when your armed citizens used to walk forth from their fellows amidst your benedictions and tears of delight.

That awful, venerable, and abused body of men assumed a title, which, I trust, the ingratitude of Ireland will never blot from her history, the glorious name of *Irish Volunteers*.

Here let me ask one question.

Do you think that they were an insurrection? They had no commission, no sanction, they were called forth by no authority but public danger—was this an insurrection? Or do you think, if any man had published a call to them, “war is declared, your coasts are threatened, your troops are abroad, the moment approaches when the reverence paid to age and sex will be disregarded.”

It is not the case of the volunteers, it is the case of my client, I put it to your hearts, would such a call by a verdict of a jury have been pronounced an incitement to criminal insurrection? What is the force of all law? its permanency to judge of facts arising now, as the same facts would be judged of at any other time. If this would not have been a libel then, what law is there which declares it one now? I will not conceal the fact. I know that an artificial, an ungrateful clamour has been raised against these saviours of the kingdom of Ireland.

Now let me read a few paragraphs of this paper.

I should be the last in the world to impute to a want of that candor, for which he is so very remarkable



able, a mistake which my learned and excellent friend fell into as to the address of this paper, but I must rectify it; it was that it is addressed to different men, not to the volunteers of Ireland. You, gentlemen, have it on the record, I call upon you to construe these words, and I ask you whether this is as addressed to the new banditti of insurgents? As to the learned gentleman's objection, to the words "citizen soldiers," I am sure he would feel it a want of respect to him, if I could suppose him serious, but the paper calls on them to "resume their arms," is this applicable to men who had never taken arms before?

"Danger at home and abroad"—God help us, from a melancholy consideration of the state of Europe, we had much to fear from abroad, and from sad experience we had much to fear at home; gentlemen, I hold it to be the privilege of every British subject, if a proclamation is issued alarming his fellow subjects, to endeavour to set them right, and deliver his opinion on the situation of the country; even in the case of a law, every man has a right to state his opinion of the expediency of the law, and if a British subject may do it, why may not a subject of the kingdom of Ireland? "Preparations for war." Now I do confess that if any man assuming the liberty of a British subject, publishes an invitation to the desperate and the needy to come forth in military array, I know no circumstance involving greater criminality or atrocity; but if having the authority of government for apprehended danger, he called on that great and glorious body, believing there was real and good cause for their exertion, I will say that his intentions were not only perfectly innocent but highly laudable. Upon this question you, gentlemen, and you only are the judges, and you are to do it by looking at the words imputed to Mr Rowan.

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But I find I am going into the merits of the paper before we have considered the question of publication.

This publication, if ascribable to my client, contains four distinct subjects, one the invitation of the volunteers to arms, as of much importance to the other subjects, reform in parliament, catholic emancipation, and a convention of the people of Ireland.

It has been stated, that the object of this paper was to excite the volunteers of Ireland to make alterations in the form of the constitution by force, and in considering this charge, it will be no harm to follow a little farther the parallel which has been made between this case and a late one in Great Britain: And I am always glad to look to that country for principles of liberty.

Let me read you a few paragraphs of the paper complained of in that case (here Mr Curran read a very long extract from the English libel, which may be found in pages 10 and 11 of the printed trial.)

Such is the language of a subject of Great Britain; a language sanctioned by a verdict of acquittal. In that case there was no doubt of the publication, a jury considered that there was no ill intention, though all the wicked purposes mentioned here were ascribed to that paper in England.

I shall now investigate the paper, again reminding you, that however the investigation may tend, it is not the act of me or my client; we are brought here reluctantly; it is the act of his prosecutors.

Is your representation imperfect? If it is, you have two estates of the constitution acting on the third, instead of being counteracted by the third. But to judge of the administration of the constitution, look at the state of the country, for it is the care of administration which forms the happiness of the people. This publication recommends a reform in parliament. Ask this question of your minds, of your consciences.



consciences, does it want reformation? do you think the people of Ireland represented as they ought to be? if you hesitate, I will tell you, that until last year three millions of your people were without a share in the legislature.

Do you not find the mockery of this charge against the paper? But to judge of the tree by the fruit, judge of the situation of the people, are they contented? do you feel that there is in this country, that veneration for the law, that pious humble reverence of the principles of the constitution, that you should expect from an happy people? Is there in the lower orders that satisfied application to industry, which a good government would produce, where the people are easy in their minds?

I know this is too crowded an audience; I know the circumstances of the times too well to go much more at large into this subject. I am not saying that these things are so, but the question comes to you, whether these imputations on the state of the country are libellous and seditious; or the effusions of a good man's heart, wishing the good of his country.

And now allow me to regret, that the same subject should be at one and the same time a subject of a criminal prosecution, and of discussion for the wisdom of the nation, the question of reform at the same time debated in parliament, and prosecuted in this court. I cannot but feel the deplorable situation of that country which calls for reform, and is answered by a prosecution. It is well known, that at the very moment this information was filed, the question was under parliamentary discussion, but from circumstances of the country, was withdrawn; but even now it is a resumed subject of consideration in parliament, and of prosecution here!

Catholic emancipation was an object of this paper,

it has been sanctioned by parliament. Reform has been debated. If the prosecutors had waited another year, what part of the paper would they have fixed upon as libellous?

It should seem as if the progress of public reformation was taking away the grounds of this prosecution, even while it is depending in the court. How will you, gentlemen, consider that part of the publication which relates to those points already conceded by parliament? have the views of some particular men been thwarted? But has the nation been strengthened by the emancipation of your catholic brethren? and will you say to them, we have, it is true, granted you liberty, but we will prosecute your advocates.

Is this a time to explore the wounds almost cicatrized, of men with hearts beating with gratitude for your favours, and to stick up in the pillory that man who dared to propose the measure? What measure? Redeeming religion from the abuses of the *church*; redeeming three millions out of four from slavery, to *give* liberty to all who have a right to *demand* it. I speak in the spirit of British freedom; a spirit commensurate with British soil; a spirit which is extended to the slave who sets his foot on British ground, and feels the genial breath of emancipation; no matter what sun has shone upon him, no matter what is the tincture of his skin, or with what solemnities he has been devoted on the altar of slavery, the spirit of the British law breathes upon him, and his manacles are no more. [Here the court was interrupted by loud and violent testimonies of applause from the persons in the outer courts.]

Lord *Clonmel*.—I speak not to the gentlemen of the bar, but to those of the auditory who are in the hall. No man hears the principles of liberty uttered with more pleasure than I do. I hear them with as  
much



much pleasure as the learned gentleman's client can; but such conduct will disgrace as well the progress as the event of this trial. I have seen the same irregularity in the greatest assembly in the nation, and I have seen them ashamed of it. I beg I may hear no more of it.

Mr *Curran*. Gentlemen, I wish you to carry your observations farther on the great subjects of reform and emancipation; if there was any occasion to defend my client by mad or drunken appeals to freedom grown into licentiousness, humble as I am, I hope he would not have applied to me, for I was not marked out for this task by private friendship; and when I confess that I am not acquainted with him, I do it as a matter of personal regret. You are sitting in a country which has a right to a British constitution; if bonds not to be broken did not tie you to Great Britain; if solemn contracts, founded on the confidence of the dead, and the interest of the living, did not bind you, we ought voluntarily to unite and say,

—————*unum et commune periculum,*

*Una salus ambobus erit*—————\*

But you give the common cause no support, if the foot of the pillar is without foundation.

England has ever been strong in liberty, and jealous of that liberty;—but whether from circumstances or times, the cultivation of liberty in her dependencies has never advanced in the same degree with her own, and the date of that of one of them goes no farther back than the year 1784.

To prove this, we need only bring the oppressed American and the degraded Indian, and it must be owing only to the spirit of Ireland, if she does not relapse into her former state of degradation, a state to which many think she is fast returning, from debilitated

\* Virg. *En. lib. 2, l. 710.*

bilitated nerve, and broken strength ; if the popular spring be not strong in Ireland, she must relapse into a province ; and it is easier for some men to govern the nation by the possession of an hired and paid faction, to keep up the connexion between the two countries, than by affirming and establishing the principles of liberty ; and as the great Father of the British minister expressed himself, for which his memory should be ever honoured and applauded,—“ by infusing a new portion of health into the constitution.”

To an humbler jury than you, I might speak of this, as a common criminal prosecution ; but I put this to your understandings, is it not a case between a delegated provincial government and a subject ? Is it not the interest of such a government to keep down complaints ? Is it not easy, in a degraded province, for men to enrich themselves by stifling the popular voice ? What will prevent this and preserve the connexion with Great Britain ? The only tie that can be lasting is a strong, firm, common constitution.

This then is the case of my client ; he thought a reform of parliament necessary to the country ; he thought catholic emancipation necessary ; no doubt a passing government will come into a court to repress him, if a jury can be found to give them support and encouragement.

One point now remains of this paper. I shall read you the words “ Local insurrection.” Here let me remark, that the prevention of partial disturbance is the avowed object of this paper.

“ Mercy to themselves.” What is the obvious meaning of these words ? We are willing not to show our power, but we supplicate administration to save the country in mercy to themselves. Gentlemen, circumstances have passed in the history of these



these countries, which will better explain these words than any thing I can say. I am not bound to support the erroneous opinions of my client, but the abstract doctrine seems to me sound and good. Let me ask you, if the unhappy James II. had before the glorious revolution attended to such a solemn warning of his situation, would his misfortunes have taken place? Mr Rowan observes upon the state of the country, he conceives that nations are patient to a certain point, no farther; he saw an instance in the infatuated mis-rule of James; if we do not think the same grievances exist which he does, that they are of a nature the people can no longer bear, we only differ from him in an opinion on facts, the principle is still the same.

He calls upon the administration to give its operative sanction to the call of the people; he felt himself strong; he was so; so is always the people. Let not (says he) the country feel that their grievances are come to that point where suffering ends, and desperation begins.

While Europe is deluged with human blood, we are yet safe. We do not see that revolution where every bludgeon is a sceptre, and the majesty of the people is wielded by the strong arm of every ruffian; yet, though this is not the case, it would be the most intolerable hypocrisy to say, that the situation of the country is exactly what it ought to be.

But when we say this, let it not be criminal in my client; when he sees what are the measures of such a government, which exists only till it is blotted out by another more atrocious; let it not be criminal in him to call upon *our* government to avert, by timely consideration, the miseries and horrors of a forced revolution.

Could you, gentlemen, go to your repose in quiet, if you believed the people were unquiet and dissatisfied

dissatisfied with the government? that they were labouring under grievances which might be removed? If such was your situation, and you could speak to your government as to your children, would you not address them with paternal anxiety, and say, "for God's sake, do take measures to prevent those miseries which you see throughout Europe."

Another objection to this address is, the recommending a convention.

I suspect that upon this ground I have taken up ideas early not warranted by law, for I did suppose, that when the bill of rights gave to the subject the right of petitioning, it gave the people the right of assembling in any manner they might think most fit and decorous to prepare their petition. The law which prohibits more than a certain number from attending a petition, shews to my mind, that more than that number may concur in a petition; and miserable in my mind would be the situation of the people, which gave to a single parish with liberality that which was denied to an extended community. But we have a law in Ireland to prevent such assemblies, and if that law had not passed, I should have supposed they were by law allowed before; before that law passed I should have supposed that a foolish law, which would prohibit peaceable supplication, and make insurrection the only legal mode of petitioning.

Since the year 1784 we have had many such assemblies; the delegates of Dungannon received the thanks of parliament; the other day we saw the delegated representatives of the catholics, elected in the same way as the convention in Great Britain in the year 1782. But do not suppose that I am complaining as of an infraction of liberty; the law has passed; if it had not been right, to be sure, it never would have passed.

We



We live in a country in which the constitution is but eight years old, where, to the misfortune of the nation, the people are more illiterate than those of most other countries; but to me it seems that the perpetual collision of sentiment, and interchange of reasoning, is a sort of political perspiration in which those foul and acrimonious humours, which would otherwise putrify and corrupt the body, are carried off.

Yet here if the people put forth their sentiments in an aggregate meeting they are censured, if a printer publishes them he is censured, how then are they to act? how are they to be used? there remains only for them the liberty of the press, that sacred palladium which the folly, corruption or depravity of a jury only can destroy.

While this subsists, the demagogue marches abroad, his sentiments, his conduct are known, his actions are open, and if he engages in the wild designs of sedition, his crimes are public. If he cannot do thus the rebel steals forth night after night in the dark, and throws the additional brand upon that pile, which in the moment of fatal maturity he will set fire to; he can only burrow and hatch his discontents in secret, and that secrecy must be fatal to the government. In those unfortunate countries, where suspicion is thus excited, such is the wretchedness of the government, that an officer is maintained by the state to seal up in bottles the waters that is to be drank by its rulers. To prevent this lamentable situation, the liberty of the press should be watched over by honest jurors. Before the revolution, when venal sheriffs returned packed juries, what was the conduct of the monarch? and what was the consequence? conceive the miserable situation of a woman looking through the rows of melancholy lights, speeding her unfortunate husband from his capital, where he might have been a king, but that he chose

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dissatisfied with the government? that they were labouring under grievances which might be removed? If such was your situation, and you could speak to your government as to your children, would you not address them with paternal anxiety, and say, "for God's sake, do take measures to prevent those miseries which you see throughout Europe."

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to be a tyrant. When the freedom of the press is destroyed, the liberty of the people and the security of the governors fall in to one common grave. I am glad that this question was not brought forward sooner, both for the sake of a jury which I highly respect, and for the sake of my client.

At the beginning of those conflicts which now deluge Europe with blood, the people of England were alarmed with an epidemic terror of French principles; at that time to accuse was to convict. There was a sort of aspiring credulity which, rising by folly, caught with delight at improbability, and the more gross the imposition was the more pleasing was it found. Only on these grounds can I conceive, why the publication of resolutions signed by the minister himself, became a ground of accusation. The madness reached a northern country, hitherto untainted by riches, or debased by poverty, a country which has produced the learned sublimity of an Hume, and the equal though simple sublimity of a Burns. What else could induce them to banish from their country talents and virtue, to pine in solitary exile, or labour with the outcasts of society?

Think of the difference of situation between a man who feels for the situation of his country, and a man making publication his trade or livelihood; who must if he does mischief, do it deliberately, with no motive but gain, and you will see how my client stands in competition with the printer of the Morning Chronicle.

But here I must explain myself. I have no hesitation in saying, that a man is highly criminal who attempts to alter the constitution by an armed force, and that if the intentions alledged were true, I should be far from defending them, and I hope the candour of the court will credit me; but I say, that he thought particular things necessary for the public peace,



peace, and advised their execution; he is only to answer for his intentions.

It should seem that these definitions of liberty and equality have been strangely perverted from their original meaning, by the ingenuity of the learned counsel; for my part I can find nothing here to warrant their conclusions; on the contrary, he disclaims the ideas generally affixed to these words.

A convention is advised, "on the 15th of February." Give me leave to remind you, gentlemen, that such a meeting was lawful at the time.

The country had been before in danger, the volunteers had saved it, and were thanked by the nation; he thought the country again in danger, and he called them forth again: was their association insurrection the first time? if it was, so it was now; and if you wish to revile the Volunteers you will say, that the invitation was seditious. As to reform, if he thought it necessary, he acted like an honest man to say so.

But, gentlemen, whatever may be your opinion of the paper, there is still another question, whether it was published by Mr Rowan? Two witnesses have been called to this point, Lyfter and Morton. The latter, you must observe, gave no evidence on which the paper could have been read; he had no paper; he had given it away the day he got it; the proof of the publication therefore rests on the testimony of the other.

It is not necessary at this time to remind you, that the credit of every witness rests with a jury; nor will I insult your feelings, by telling you of the care you should use in watching over the liberty, property, and life of every fellow subject.

Lyfter says, he is in the army; that it is his general custom to make such indorsements on the pa-

pers he gets ; that he made it from mere fancy, and not in order to be able to give evidence of it.

Sure this is something improbable. I will put his credit on the positive evidence you have had of his character ; his testimony has been impeached by such proof as I shall relate to you. Mr Blake knew him. Did he tell you he thought he should be believed ? No. He said he would hesitate. Do you know him of your own knowledge, gentlemen ? if you do not, you must believe Mr Blake. Lyfter may say, that he was attacked thus on a sudden. If he was I admit he might be injured ; but did he not also say, that he knew Blake was to be here ? he knew Mrs Hatchel, a respectable woman, would be here to impeach him.

*Attorney General.* I beg pardon, but I must set you right, Mr Curran, Lyfter said he had heard Blake would be here, but not in time to prepare himself.

Mr *Curran.* But how came the counsel for the prosecution to be so well instructed with respect to Mrs Hatchell's circumstances ? Gentlemen, I again repeat it, the only witness against my client has been impeached and not defended. One observation more. If you have any doubt as to the fact of publication, Give me leave to suggest to you what you should consider in order to find your verdict.

Few men are more generally known than my client, not only from the share he has taken in public affairs, but from a circumstance which I am sorry to say he shares with so few.

There is not a day that you might not have seen that honest manly form, bare headed in your streets, soliciting for your starving manufacturers the bounty of his fellow citizens. Or if you did not wish to look to his public character, you might trace his private benevolence to the bed of sickness, or the habitation of despair. If you chuse to leap over the doubts



doubts of this proof, or rather these dark hints of a blasted witness, not the veriest ruffian in society will be found to insult him even in the most disgraceful situation.

Another circumstance differs this case from that of a man charged with a common crime; you cannot, as in Scotland, banish from the country those virtues it is unworthy to possess.

Therefore when I consider the whole of the circumstances of the case, the character of the witness, and the character of the man himself, I am not without hopes, that this day will be the end of his sufferings, and that your verdict will send him home to his rejoicing family; and though he be tied and manacled, and thrown into the flaming furnace, because he would not bow down to worship the golden image, I trust there will be found in the constitution a redeeming spirit to walk with him through the flames, and lead him forth uninjured.

*Attorney General.* Though it is the task of his majesty's Prime Serjeant to speak for the prosecution in reply, yet something which has fallen from Mr Curran, an assertion, and merely an assertion, makes it necessary for me to say a few words.

He has stated, that this prosecution is carried on for purposes of oppression, and some particular hardships are mentioned.

I do aver, that the instructions he has received are false,—and that I have received no direction on the part of government for this prosecution; and I feel myself conscious, that no man, whatever were his rank, should ask me to do such a thing twice in the office I hold.

As to the paper and the evidence, I leave them entirely to the jury; but as to the assertions which have been made, I must speak.

If I have carried on this prosecution for oppression,

tion, let him charge me with the particular fact in the face of the country, let me be thrown from this office which I hold, and from that profession which must be disgraced by such conduct. But what is the fact?

Mr Rowan was arrested in December 1792, carried before Mr Justice Downes and bailed; the information was filed in the Hilary term next immediately following; Mr Rowan pleaded; the *venire* was issued, returnable in Trinity term; and I do aver, with a *bona fide* intention of bringing him to trial.

Upon examination, there appeared to be an error upon the record, the words *we would*, were misrecited for *would we*, an error of which Mr Rowan, if he had been brought to trial, might have taken advantage, and upon which he must have been acquitted. Upon a motion which I made to file a new information, it appeared that Mr Recorder, his counsel, was acquainted with the error.

The Recorder, upon that occasion offered to go to trial, without taking advantage of the error; I consented. But on turning to the Crown Solicitor, he informed me that the witnesses had left town and were then in Galway. A *noli prosequi* was immediately entered on the first information, a new one was instantly filed, and in the next term I applied to the court to fix the trial as soon as possible, but from the number of, and length of the trials in that term, the court could not grant it; this was the first open day in this term, and this day the trial has been brought on before a respectable jury, who, I trust, will do justice.

Mr Curran. Mr Attorney, I could not know the circumstance of your witnesses being out of town.

Attorney General. It was impossible you should.

The



The Right Hon. the *Prime Serjeant*.

*My Lords, and Gentlemen of the Jury,*

WEARIED and exhausted as you must be at this late hour, fatigued and oppressed as I myself am, it is my duty to press a short time upon your attention, in a cause which my learned friend has, in discharge of that duty which he owes to the public, been obliged to institute, to check and stop, if possible, the circulation of principles and opinions, which have nearly frightened the island from her propriety.—I say, obliged, because prosecution is painful to him, as the infliction of punishment must be to you. But in the discharge of a public duty, all weaknesses must be overcome. There is a justice due to the individual—so there is a justice due to the public—and a rigid adherence to that justice, is the source of mercy to thousands. Of that justice I am the advocate, and not of a personal or vindictive prosecution. No man, who recollects the period when this publication appeared (and it was a period of too great and painful notoriety to be readily forgotten) I say, no man who recollects that period, but must think it fortunate that we yet have a supreme court of criminal jurisdiction, founded on the laws and constitution of the country; that the trial by jury has been yet preserved pure and inviolate; that the court of King's Bench has not been yet superseded by a revolutionary tribunal; and that my learned friend has not e'er now made room for a public accuser. The defendant himself must think it fortunate, that he appears before a court, bound by their oaths, to declare the law; aided by counsel of his own election; tried by a jury of his fellow-citizens, bound by duty, as inclined by principle, to mercy---but bound by the sacred obligation of their oaths, regardless of all consequences, fearless of threatened massacres, and superior to  
all

all personal and political terrors, to declare the defendant guilty, if they shall believe him so. I am confident, that with you, Gentlemen, the unwarranted suggestions which have been made, can have no weight. My learned friend and I, have been held up as the advocates of a prosecution, suspended until artifice and conspiracy had irritated and indisposed the public mind to the defendant: but if my learned friend had not so clearly and convincingly stated the cause of the delay, I should feel his and my own superiority too much, to condescend to any observation upon it. The learned counsel for the defendant, has, with great address, endeavoured to carry you and us away from the subject, and to set your passions at variance with your judgments and conscience, foreseeing that the decision of a jury, respecting their oaths, must be against him.

You have been told, that this prosecution was instituted, because this publication calls upon the Volunteers to resume their arms, recommends a parliamentary reform, the catholic emancipation, and a national convention. The learned counsel mistakes the grounds of this prosecution, it was instituted, because this publication throws those subjects before the public, accompanied by factious, seditious, and turbulent observations, calculated to excite the people to arms, to indispose them to, and render them discontented with the constitution of the country; and to intimidate the legislature. Little does the learned counsel know of us, if he supposes we have any other than public motives to this prosecution; or that my learned friend would, in his office, prosecute any man for recommending these subjects to cool and calm discussion.

In this view has the defendant's counsel, with great ingenuity, endeavoured to present this publication



cation to you, leaving to me the painful duty of calling your attention to the offensive matter.

Gentlemen of the Jury, it is for you to take up the subject differently, and towards the formation of your opinion; I should with great humility propose three questions to your consideration: Was the paper published by the defendant? Is it a libel? Was the intention of the publication criminal? If you cannot answer each in the affirmative, I think you should acquit the defendant. But if the power and strength of the evidence call for an affirmative to each, and you should from favour, partiality or affection, personal or political timidity, acquit the defendant, you will stand accountable to your families, to the public and to your God, for all the mischiefs that must necessarily result from the impunity of faction and sedition.

I shall beg leave to reverse the order in which this question has been hitherto submitted to you—The first question is, whether the defendant did publish this paper? If after the evidence you have had any man who hears me, does not believe this fact, it is in vain for me to address him---(here the Prime Serjeant stated the evidence of the publication at large.)

If I have mistated any part of the evidence, your lordships will, I hope correct it; it is far from my intention---the discharge of my duty does not require an injury to the defendant, and if it did, the honour of an advocate would not admit it. The first witness appears to me to have clearly proved the publication by the defendant. On his cross examination, a long irrelevant account of his connexions was gone into, of a law suit with his brother---of his family concerns---a bond alledged to be forged, on a trial of which, it appears, that a reference was proposed, on which reference let me remark, that it also appears, that a part of the sum was awarded,

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which

which never would have taken place, had the bond (in the opinion of the referees) been forged. An ineffectual attempt was made to impeach his testimony; and it is objected against him, that knowing Mr Blake would be produced, he did not bring some witness to contradict him.

Your lordships will, with observations, submit to the jury, how far Mr Lyfter's credit has been impeached---But Mr Lyfter answered the objection himself, when he said, he had heard of Mr Blake's intention for the first time, this day.

The next evidence is Mr Morton, what he says goes in direct confirmation of every thing sworn by Mr Lyfter; that he, on the same day and in the same assembly got a paper of the same kind; that he heard it read and recollects a paragraph, and it is a remarkable one, that must arrest the attention and awaken the fears of almost any man---“Citizen Soldiers, to Arms”—that some of the papers were thrown among the mob in the street. The poison appears to have immediately operated upon them, and they clamorously called for more.

Lord *Clonmel*. If the proof depend solely on Morton's evidence, I should direct an acquittal.

*Prime Serjeant*. True, my lord—But it is strongly corroborative of Mr Lyfter's.

Gentlemen, it is in far abler hands than mine to state to you what the law considers a publication, but I will beg leave to say, that any act by which a libel is put into circulation amounts to a publication.

A ridiculous and vain attempt was made to discredit Mr Lyfter, by the evidence of a woman, who appears to have been exasperated by a quarrel with his brother, and who founds her opinion of him, upon his brother's declarations. But recollect the anxious, but ineffectual industry with which witnesses have been collected, to impeach the credit of

Mr



Mr Lyster—recollect, that the fact he swears to, happened in the presence of one hundred and fifty, in the city of Dublin. Many of them probably, at this moment present, and not one comes forward to contradict him. Would not they press forward with a laudable emulation, to vindicate the defendant if they could? In their silence, you have one hundred and fifty corroborating witnesses. The defendant owed to himself, to disprove the charge if he could? but, such I am confident is the honour of the defendant, that he would not purchase an acquittal, or any other advantage, by bringing any man forward to swear to that which was not the fact.

As to the libel itself, or rather the paper, for it is your province to decide, whether it be a libel: you have been told, that to warrant you to find the defendant guilty, it is necessary you should believe, that the publication was likely to produce each of the effects and consequences imputed to it by the information. In my mind, there are paragraphs in it, sufficient to support every one of the probable effects imputed to it by the information; though if it appears calculated to produce any one of those effects, that will be sufficient in point of law, to warrant you in concluding it a libel.

The only defence offered on the part of the defendant, was, the unauthenticated report of a trial for a libel in Great Britain, and an Irish Jury acting upon their oaths, have been called upon to adopt that precedent and (because an English Jury did ultimately acquit the defendant of intention) to acquit the defendant here. Much has been said of that case, but gentlemen have industriously forgotten to state what the case there was—It was the case of a printer acting merely as such, and acknowledged by the prosecutor to be a chaste printer. The first finding was—“ Guilty of the Publication, but with no

malicious intent.”—which the learned judge refused to receive, as it was in law no verdict, and a verdict of—“Not Guilty”—was afterwards returned.

Had this paper now before you, rested with the invitation to the volunteers to resume their arms, it is probable, that the defendant would not have been prosecuted. But, suppose the first part of it to have been perfectly innocent, let us see what the learned judge,\* who presided at the trial alluded to, would have said upon the whole—“there may be morality and virtue in this paper, and yet, perhaps, *latet anguis in herba*, there may be much that is good in it, and yet, there may be much to censure.”—But even this part of the paper which has been relied on, as meritorious in the defendant, teems with principles of a very different nature. Could such propositions have been expected from men adopting so specious a title, as that of United Irishmen, and should such have been addressed to the Volunteers of Ireland?—But the mischief was to be disguised, and under their cover, conveyed to the unsuspecting people; well might they suppose the publication innocent, and that tumult, public disorder and sedition, would not be proposed to the Volunteers of Ireland.—“Citizen Soldiers”—Here is an adoption of French expression; it is for you to judge, whether it is accompanied by French principles. Says a great and learned judge on the subject of libel, the circumstances and situation of things, at the time of the publication, are material for the consideration of the judge and jury, in forming their opinion of the matter and intention of the publication; was it a time to throw before men in arms such topics for public discussion?—“Danger abroad and at home, the menacing preparations for war drawn through the streets of the capital”—Here  
you

\* Lord Kenyon.



you have the strongest and most alarming picture of the situation of the country in the defendant's own words—public credit was shaken—apprehension seized every mind—and no man could lie down secure of awaking in peace.

Had this paper the meaning which is contended for, it would have called upon the people to defend that government, which, on the contrary, it vilifies. The publication proceeds to insinuate, that the object of the proclamation was, to blast the volunteer honor, and an intention to disarm them. “We will not condescend to quote authorities for the right of having and using arms.” Was that suggestion necessary to calm discussion, if listened to? Was it not likely to produce the most alarming consequences? “A storm raised by the witchcraft of a proclamation;” an imputation against a measure, to which, under God, the country owes its present tranquillity. Is this a peaceable address to the volunteers?—“Notorious police or suspected militia”—A peaceable, quiet invitation to the volunteers; censuring one legalized establishment, and tending to raise the popular indignation against another then in contemplation; a design, which, alas! too fatally succeeded and ended in a sacrifice of numbers of the wretched people, to the delusion.

Next follows a requisition to the army to disband—What! the army to which we owe so much—our security and our lives—whose tried fidelity and loyalty keep pace with their valour—are they to be told that they are unfit for the honourable service of their country, because they are paid by the nation.—“It is only by the military array of men in whom they confide, that the public mind can be stilled, in the confidence of a speedy resurrection of a free constitution.”—Here the people are told that their free  
constitution

constitution is dead, and they are called upon to look not to the wisdom of parliament, but to an armed array for its resurrection.

Being armed, the volunteers are called upon to stand to their arms, "in spite of a police and a militia;" here is an attempt to commit them, and to plunge them into all the extremity of opposition—was this to preserve the laws and constitution? Is it not a call upon the volunteers to oppose the executive power of the state?

If this paper were not throughout a libel—if there were no other paragraph before you than this last, you could not hesitate to pronounce it a dangerous and seditious libel; "citizen soldiers" are again summoned, "to arms," liberty and equality are defined; and then comes on a paragraph which was to me perfectly unintelligible, until the learned counsel for the defendant argued it, "the faction or gang which misrepresent the king to people, and the people to the king,"—this the learned counsel avowed to relate to the government of the country; from his argument I put this construction on it—"collective will," another French idea—the mass of the people.

In this *innocent calm recommendation* of a discussion of political questions, was it necessary to tell the army, "that they became soldiers by seduction—but that nature made them men?" Danger at home and abroad, was it necessary to provoke the army to desertion, or to weaken their attachment and their duty, by telling them they were seduced? Was it necessary to produce a parliamentary reform, or catholic emancipation? No—but it corresponds with the obvious purpose of this publication. "In four words lies all our power, universal emancipation, and representative legislation."

"Without universal slavery we cannot have universal emancipation,"—but I dread to analyze. Representative



representative legislature---are your nobles, and your king to be elective? I touched upon and quit the expression with apprehension and horror. By arming, the people are prepared to effect a revolution, "the nation" is said "to know, but to be unwilling to manifest its power," and the government is called upon "to anticipate a revolution by a reform, and to preserve the country in mercy to themselves," cool sober discussion; the people are prepared to effect a revolution by force, and the government is called upon to anticipate that revolution by concession. Is this the liberty of the Press for which the counsel for the defendant has been so eloquent? it is not the liberty of the Press for which my learned friend and I would venture, as far as he or any man who hears us.

The next sentence calls our attention to a very memorable period, it calls for another convention at Dungannon, on the 15th of February, to stigmatize and disgrace that day with the assembly of a convention, to overturn that constitution which was asserted in 1782; "the military bodies are called upon to attend;" Were they called for peaceable, quiet, calm discussion? Or was it to be a NATIONAL CONVENTION attended by NATIONAL GUARDS, who were to convey its resolutions to parliament, backed by 20,000 men in arms? "We have thought it our duty to speak---answer us by actions;" that is, we have told you our object---universal emancipation and representative legislature---no discussion---act---so only can you accomplish our purpose.

"In 1782, (proceeds this publication) did you imagine that in 1792, this nation would still remain unrepresented? how many nations in this interval have got the start of Ireland?" Here is a direct attack upon the constitution of Parliament, addressed to a body which it was intended to rouse to arms, accompanied

accompanied with a pious lamentation, that other nations, (America I suppose and France) got the start of Ireland; in what? In the establishment of republican governments.

Such appears to be the true construction of this publication, what was its immediate effect? one of the witnesses told you, that it so delighted the mob, they called for more, so rapidly did the contagion catch them. In this case, no evidence of innocent intention, no alleviation or excuse has been offered; you are therefore to consider the full meaning, as the full intent of the publication. In all cases of publication, containing improper matter, the bad intention of the person publishing is clear, unless he on his part proves the contrary. In all criminal cases the crime arises from the intention; that intention is to be collected from the overt acts of the party; so in the case of murder; killing is *prima facie* murder, it may change its colour from circumstances, so here, the evil tendency of the publication is *prima facie*, evidence of the evil intention, and is conclusive until repelled by evidence to prove its innocence. The learned counsel for the defendant, has endeavoured to set your feelings and passions in opposition to your judgment; he has spoken rapturously of the liberty of the Press; let me tell you in plain simple language, and from great authority, what it is---“The liberty of the Press is placed as a sentinel to alarm us, when any attempt is made on our liberties, and we ought to be watchful, and to take care that this sentinel is not abused and converted into a traitor; it can only be protected by being kept within due limits, and by our doing those things which we ought, and watching over the liberties of the people; but the instant it degenerates into licentiousness, we ought not to suffer it to exist without punishment; it is therefore for the protection



protection of its liberty that its licentiousness is brought to punishment." \*

I feel that I have at this late hour trespassed on your patience too long, I shall therefore conclude, conjuring you to give that verdict, and that only, which men acting on their oaths ought to give, in discharge of that duty which they owe to themselves, their country, and their God.

Lord Clonmel,

*Gentlemen of the Jury,*

AT so late an hour as this, I am happy, that the labour and distinguished abilities of the gentlemen on both sides; have made it unnecessary for me to be very prolix; I shall, therefore, contract what I have to say as much as I ought to do.

Before I give you any direction as to the paper, which this information states to be a false and scandalous libel, I think it my duty to apprize you of a statute passed in the last session of parliament, by which it is declared and enacted, "that on the trial of any indictment or *information*," which by the way is (if it wanted it) an additional solemnization of that mode of trial, "the jury may give a general verdict of guilty or not guilty, upon the whole matter in issue, and shall not be required or directed by the court or judge, before whom, such indictment or information shall be tried, to find the defendant or defendants guilty, merely on the proof of the publication, by such defendants, of the paper charged to be a libel, and of the sense ascribed to the same, in such indictment or information." 33 Geo. 3. c. 63. §. 1.

You had the *power* before, perhaps the right, and you will, on this occasion, return a verdict upon the whole matter, as upon your oaths you ought to do — Though the evidence adduced in this case, is not

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long,

\* Lord Kenyon's charge in the case of the Morning Chronicle.

long, yet, the paper itself is; I shall therefore follow the mode adopted at the bar, and divide the subject into four heads.

The leading objects charged upon this paper, are, first, making government odious, and endeavouring to disparage and degrade it. Secondly, making the people discontented, not only with government, but the constitution. Thirdly, calling upon, and stimulating the people to take up arms, to intimidate the legislature; and, Fourthly, stimulating the people to attack the constitution and government, and destroy them both by force.

Every thing that I shall say, will be reducible to some one of these heads.

The information is, "that A. H. Rowan, maliciously designing, and, intending dangerous and seditious tumults to raise, to draw government into disgrace, to excite the king's subjects to attempt force and violence, and with arms, to make alterations in the government, state and constitution of the country, to excite the people to tumult and anarchy, and to over-awe the legislature by an armed force, &c." did on a certain day publish this paper; this introduction points out the four different heads of this subject.

It will be easier both for you and me, gentlemen, that I make short observations, as we go along upon the paper, and I hope, if the brief or transcript of it, which I have, should be erroneous, that the gentlemen of the bar will set me right.

"The Society of United Irishmen"... This is afterwards stated by themselves, to be a self-created body, and *vauntingly* so; therefore, this is the language of a self-created body, not known to the government or the constitution, not known to the subjects at large; and, indeed, scorning and studiously avoiding the name of *subject*.

Gentlemen



Gentlemen at the bar have differed in opinion, as to whom this paper is addressed; but, take it either way, it was evidently for the purpose of seduction; and, if to the old volunteers, as they were the greater body, the crime, if it was addressed to them, would be so much the greater.

"Dr Drennan, chairman---Archibald Hamilton Rowan, secretary"---This raises some presumption, that the traverser was well acquainted with its contents, and if the fact of publication be proved to your satisfaction, by him, this goes to prove, that he knew what he published.

"To shake that credit"---this clearly, in my mind, falls under the head of tending to render the government odious, that their proclamation had created that internal commotion, which was not found.

"To blast that volunteer honour"---This seems intended to exasperate the persons to whom it is addressed; a charge, that the executive government was blasting their honour.

What would be the natural answer of the subject to this part of the paper? "What, gentlemen United Irishmen, do you tell us, that, this government which should support our credit, is destroying it; and, that it vilifies the honour of those men to whom we owe so much?"

Whether this supports one of the complaints laid in the information, will be for you to decide on your oaths.

"At least our old men, women and children"---This is an insinuation, that the alarm of government was all mere imposition.

"Summoned to arms"!!!

"Storm raised by, &c."-----This seems a direct imputation on government, of having raised a storm in the country.

The plain meaning of the next sentence is, that,

if the persons to whom it is addressed, do not supersede a notorious police (which is, at best an equivocal expression,) and a suspected militia, they cannot preserve the peace of the country. How supersede? Is it by opposing them? Surely no words can be more inflammatory than these.

“In defence of your rights”—Was it necessary, thus to call upon them to defend their rights, if they were not attacked?

“Mercenaries”—There seems to be no expression of stimulation, not made use of in this paper, to urge the persons to whom it is addressed to arms;—“the nation is impotent without you, and the aid of your arms.—It is only by the military array of men in whom they confide.” You, in whom the king’s subjects confide, must be the array---the present agitation can be stilled only by men confided in, as you are, in military array.

“Speedy resurrection of a free constitution.”---This has been already commented upon with sufficient force: I shall only add, that I think it conveys a strong insinuation, that the people of Ireland have not a free constitution.

“Calumny”---Whence is it insinuated, that this calumny arose?

“That faction or gang”---Are not these aspersions rendering government odious? Where is this faction or this gang, which they say, exists for the purposes of obtaining power, in order to abuse it?

*[Here his lordship read the definition of liberty and equality, given in the information.]*

Gentlemen, perhaps you understand this---to my mind, it appears a collection of unascertained declamatory terms; the general meaning, if there is any, seems to be extending the right of suffrage to all the members of the community. This falls under another of the general heads, contriving to overturn the



the constitution; the whole body of the people never had the elective franchise, that franchise never was more extended than at present in England or Ireland: at the time the freeholder's qualification was first enacted, it is calculated, that forty shillings then, were equal to forty pounds sterling at this day; such is the difference between the times of Henry the Sixth and George the Third in the value of money. I mention this to shew, that the whole body of the people never could have voted.

"Nothing but reform"---This as an abstract paragraph may be innocent, but the question is, what reform they intended?—nothing but reform can cure—nothing but reform can keep our constitution.

"Citizens"—Not oneword of "subjects" throughout.

"Seduction made them soldiers,"---I quarrel not with the composition; to consider, that is no part of my duty, but it must appear to every plain mind, that this is a direct charge against government, of having seduced men to become soldiers, and advice to the people to recollect, that they were so seduced.

"Without any other authority than reason,"---It was this which made me call them a self created society; they say themselves, that they have no other power of calling the people to arms, than such publications as this.

"Raise the world,"---Here let me rest for a moment, to consider what could be the meaning or intention of the publisher or writer of this paper, when he says, a single man by these means, shall first move and then raise the world; it is one of the charges against this paper, that it is intended to raise the people; here it is a vaunt in the paper itself; if it has happened that a single man could do so much mischief, it is a melancholy consideration; to raise the world, to what? We shall see directly.

"Beloved

"Beloved principle,"---It is for you, Gentlemen, to consider what principle this is, when the emancipation of three millions is by their own statement merely *in limine*, or introductory to that principle.

"Manifest its power,"---This falls under another head of the subject, *menace*, and is in other words, that if their purposes are not accomplished, a revolution must take place.

"Civil assembly---military association,"---This falls under under the same head of intending to alter the constitution by force, demanding military aid to establish the determinations of their convention.

"Answer us by actions,"---We have spoken plainly, do you by military exertion, answer us by military actions.

"How many nations have gotten the start of Ireland,"---What is meant by this is hard to say, for my part, I know not what nations they are upon the face of the globe, which have advanced more in happiness and prosperity, during the last fourteen years---than Ireland.

I have thus gone through the paper stated in the information; but I must tell you, as it is my duty to do, that you must yourselves think it deserving all that is charged against it in the information, before you can find a verdict of guilty; you are to judge of its meaning, this is only *my mere opinion*, the consideration of the paper is legally yours, not mine.

To prove the publication of this paper, John Lyfter has been produced.

[*Here his lordship read the evidence from his notes.*]

That part of his testimony with respect to Mr Rowan's conversation with him about coloured cloaths, being merely to the best of his recollection, is not to be taken into consideration.

When he swears that the paper read by Mr Rowan  
was



was the same with that now before you, it proves, if you believe his evidence, that Mr Rowan was acquainted with the contents of the paper, as far at least as he read.

The tendency of his cross-examination was to shake his credit; the grounds were, that he had been a witness to a bond passed to his brother, which was denied to be genuine; that he had got an ensigncy in the army since this transaction; and that it was improbable he would make such a memorandum as he has sworn. In my opinion, he has given a rational and consistent testimony, but that is for you to judge of; he said Lady Hobart was his relation, and procured him his commission; and as to the family transaction, it seems the referees awarded something to the person who had the bond, which we may presume they never would have done, if it had proved a forgery.

William Morton was next examined, but before I speak of him let me make one observation, which has been made by the prosecutors, and strikes me forcibly. Gentlemen, if you believe the witnesses that this transaction, which is sworn to have passed in the presence of one hundred and fifty persons, really took place, and that no man is produced to vindicate the innocence of a gentleman so well known in Dublin, as Mr Rowan, or contradict any one of the facts sworn to by the prosecutor's witnesses; Volunteers, United Irishmen, all descriptions of people sworn to have been present; this silence, to my mind, is a volume of evidences.—But you are the judges of the credit due to witnesses, not I.

The time was decisively marked, the place, many of the persons, surely if these were false, it was easy to contradict them, by a hundred circumstances, but no such attempt has been made.

But

But this witness confirms what was said by Lyfter; except as to the publication by the defendant; other circumstances are all corroborated by him. It seems some diligence has been used, and a person brought up from Galway to discredit Lyfter.

*Attorney General.* My Lord, he had lived there once, but he now lives in Dublin; that was what he said.

Lord *Clonmel.* So it is. Gentlemen, this Mr Blake was brought to impeach the credit of the first witness; the question usually asked was put to him "Do you believe that such a man is to be believed on oath?" To this he could give no answer. The same observation applies to Smith, no person gave an answer to the proper question but the woman; you are the judges of the ground of her testimony.

As to the publication, it is my duty to tell you, that there is evidence to go to you, that Mr Rowan did publish the paper, and I have told you also, that I think the paper libellous, but upon both these points you are the persons to decide.

In my opinion, upon the whole, if you believe that the defendant, Archibald Hamilton Rowan, published this paper, with a criminal intention, that is to say, with the intentions ascribed to him in the information, if you think that it deserves the epithets there given to it, and is a seditious libel, you will find him guilty; but if you believe, that he did not publish it, or that he did publish it through mistake or innocence, as if, one paper for another, as it might happen, but of which, you have no evidence; in that case you will find him not guilty—or to vary this direction, and state the ingredients which I think necessary to find him guilty; other words it must be, because, you believe that he did publish the paper, that the inuendos in the information are true, as you understand the paper, and that  
he



he published it with a criminal intention, that is, adopting its sentiment, and meaning; on the contrary, if you acquit him, it must be because you believe he did not publish the paper, or that he did it by mistake. But I must tell you, that in point of law his thinking it right to do so is nothing; if you believe the tendency of the paper was to raise a force to intimidate the legislature, HIS opinion of the propriety of such measures is not to be considered as an exculpation, for such an admission may lead to the acquittal of every felon on earth, if he could work himself up into an enthusiastic opinion, that he acted right.

Gentlemen, I have now done—I leave the decision to you—if I have mistaken any thing, you will hear me corrected by my brothers; I am sure, you will hear them with pleasure and information.

Mr Justice Boyd.

*Gentlemen of the Jury,*

MY Lord Clonmel has stated very fully the several parts of this paper, I adopt every one of his observations, and I think it deserves all the appellations, given to it in the paper.

My Lord has also very properly told you of the act of parliament of the last session, an act founded on the supposition, that judges had gone farther than they should in trials of this kind; he has declared to you the law as it now is; that the whole matter in issue is left to you to be tried: the court may give you its opinion in point of law, but you are not bound by it; you have heard the evidence, and the questions to be tried; first, whether there was a publication by Mr Rowan; if you think he did publish it, and know it to be a libel, you will find him guilty; but his own opinion that it is right, cannot justify his attempting (if he did) to over-awe parliament.

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Mr Justice Downes.

*Gentlemen,*

THE few words I shall trouble you with will agree with what you have already heard from the bench.

If you believe Lyfter, and his testimony stands uncontradicted; the publication by the defendant is proved clearly, and it is as clearly proved, that it was a publication industriously and knowingly; and under such circumstances, as I shall not hesitate to say that he adopted its contents.

I concur with the observations made on the paper, and I cannot read it without believing, that it tends to excite to arms those to whom it is addressed, and with that intent it is stated in the information to have been published.

If you believe Lyfter, as to the mode of publication, and that Mr Rowan adopted it as his act, you are to look for his intentions in that paper, and if you believe that they were to excite men to arms, for attaining a public purpose; I have no doubt, that such intentions are imputable to the defendant, no evidence to the contrary having been given.

To attempt to alter by force the constitution, or to over-awe the legislature if it came to act, would amount to High Treason; a paper exciting to such attempts, no man can doubt is a seditious libel, if you believe, reading coolly and quietly, that such is the tendency of the paper in question, you must in my mind say that it is a libel; if you believe that it tends to excite to arms, any class of his majesty's subjects, to attain any object ever so desirable, by force, I think you cannot doubt of its being a libel; whatever may be your opinion of the paper or the evidence, I am confident you will decide in justice.

The jury retired, and in about ten minutes returned, with a verdict of GUILTY.

Mr



Mr Curran informed the court, that Mr Rowan was ready to receive sentence, if such was their lordships pleasure.

The court said, that as by the common course, a defendant had four days after the verdict allowed him, to move in arrest of judgment or offer any thing in mitigation, they would not deprive Mr Rowan of that advantage.

Mr Rowan was committed to the custody of the sheriffs, and conducted to Newgate.

*Monday, February 3, 1794.*

The Attorney General moved the court to have Mr Rowan brought up to-morrow for judgment.

It was ordered by the court.

Mr Rowan's solicitor, (Mr M. Bowlin) this day served the Attorney General with notice, that his counsel would on to-morrow, move the court to set aside the verdict of last Wednesday, and grant a new trial; this application to be grounded upon the affidavits of William Porter, John W. Atkinson, John Coultry,—Clarke, and Mr Rowan, (who was brought up in order to swear his affidavit) stating, that the verdict was obtained upon the evidence of a person who ought not to be believed on oath; that some of the jury were unfairly prejudiced against the defendant; and that the sheriff who arrayed the panel was partial against the defendant, and arrayed persons whom he knew to be enemies to the defendant.

The affidavits were read, and were in substance nearly as follows:

Atkinson swore, that in the month of August last, the day after illuminations had taken place for the surrender of Valenciennes, he had a conversation with George Perrin, of Castle-street, one of the jurors in this cause, concerning the Volunteers; that Perrin spoke of the volunteers with great

anger, and said the country would never be at peace, or its trade flourishing, until Hamilton Rowan and Napper Tandy were hanged or transported.

Porters' affidavit went to the same circumstance.

John Coultry, who was brought up from Newgate to swear his affidavit, deposed, that he knows John Lyfter, who gave evidence in this cause; that said Lyfter is not to be believed on his oath; for that deponent knew him to swear, that a certain horse, of which he Lyfter was possessed, and which had been seized for debt, was not his, but his brother's horse; that on another occasion, deponent went with Lyfter to a magistrate, where Lyfter took an oath in the name of his brother, George Lyfter, whom deponent knew to have been at that time sick in his bed, at a distance of seventy miles.

Clarke swore that he is an hair-dresser, and dressed John Lyfter's hair for near three years; that he summoned him to the court of Conscience for a sum of money due to him, and that Lyfter there swore, that he had never seen deponent in his whole life, although this deponent had, on the very same day, conversed with him on Essex-bridge, respecting the debt; and that he therefore believes Lyfter ought not to be believed on his oath.

Mr Rowan made two affidavits, stating, that the above circumstances had come to his knowledge since the trial, that, all which sworn, as to his having published the paper, was utterly false; and also, that John Giffard, Esq; the high sheriff, who, or his under sheriff, arrayed the panel, holds a considerable place of profit under the government, is a captain in the Dublin militia; and, as deponent hears, believes is the conductor of a government news-paper; that deponent believes, said Giffard, is prejudiced against him; and that, as deponent hath heard, and believes, said Giffard, did labour  
to



to return a panel of persons, whom he knew to be inimical to deponent.

Mr Rowan was remanded to prison.

*Tuesday, February 4, 1794.*

Mr Rowan was this day brought up, in order that the motion for a new trial might be argued.

His counsel offered other affidavits to the court, but, as the Attorney General refused to consent, they were not allowed to be read; he had, he said, upon hearing those of yesterday's read, resolved not to answer them, or the notice; he was prepared to resist the motion; but, as to protracting the business, as long as any person could be found to make an affidavit, he could not consent to it. \*

Mr Fletcher, Recorder, and Mr Curran, for the motion for a new trial, argued, that although it was true, that no one of the grounds laid in the affidavits was sufficient, yet that, as the rule of law was, that the court would grant a new trial, if it appeared to them, that justice had not been done; that this was not a common case, that the defendant was a man of great rank and respectability, and that although the rule of law knew no distinction between persons, yet that, in an application to the discretion of the court, such considerations were allowable: that crimes of this kind should be substantially proved, that the object of the law was prevention, not punishment; and that object would be better attained, by shewing the people, that the defendant had had a fair, cool and impartial trial. They freely owned, that no case, like the present, could

\* During this motion, the court was so crowded, that the crown lawyers found it extremely difficult to get in: Mr Frankland, in particular was so hurt, as to be unable to attend the business of the day. One of the Sheriffs, (Mr Jenkin) in endeavouring to make room, was insulted by a person in one of the dark passages under the jury box; he complained to the court, and the offender was ordered into the dock; when he appeared there, he was known to be Doctor Reynolds, who was committed to Kilmainham, by the house of lords, last sessions.

could be found in the books, they could only reason from the case itself; that it was true, they had no new substantive defence to offer, but a defence, which they had not materials sufficient for, on the trial; discrediting the only witness, who proved the case for the prosecution, this would certainly acquit their client; but, that all these grounds taken together, were strong ingredients to call upon the discretion of the court; that discretion was nothing more, than a sound application of the sense of the court, to the particular circumstances of every case which was here called upon, by a denial of the charge, by a man, one of the most respectable in the kingdom; that all the circumstances sworn by the affidavits, not being contradicted, were to be taken as true; that the prosecutors ought to renounce such a verdict, as could answer no good purpose; that, though it was an early opinion in the criminal law, that a verdict should not be set aside, yet, for half a century back, it had been done. 2 Hawkins 628.

Mr Curran contended, that a good cause of challenge, not known before the trial, is sufficient to set aside a verdict; and to prove this, he cited 7 Mod. 57. he also alledged, that the learned chief justice had misdirected the jury, by assuming the fact of the meeting in Cope-street, as granted; and arguing from that assumption, to Mr Rowan's silence, in not producing evidence of his innocence; this, he insisted was an absurdity, first, desiring a man to admit a part of a crime, in order to be better able to deny the whole; it was calling on Mr Rowan to prove a negative, and it was calling on him, after an absolute denial, of all that had been sworn to by the prosecutor's evidence, to bring some person who was at the meeting, which he denied to have existed, to prove that he was not there.

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Lord Clonmell denied, that he had given any such charge; he said, that to the best of his recollection, his charge was, "here is a meeting described, the time Sunday, the persons, Volunteers, the circumstances, sure it was easy to disprove any one of these;" for instance, if the keeper of the fencing school had proved, that it had been locked the whole day, or Mr Rowan proved, that he was in a different place; it is a common case, an *alibi* is proved in many criminal trials, every day.

Mr Curran went on with the same argument.

The Court having sat late, postponed the hearing the prosecutor's reply till next day.

*Wednesday, February 5, 1794.*

The Attorney and Solicitor, the Prime Serjeant and Mr Frankland, replied this day,

As to the three points stated in the notice, they would take them each singly, and by that analogy, which it was desired to draw between this and a civil case, they would try their force and effect; the first point was, the testimony of Lyster, which was sought to be discredited afresh, after an unsuccessful attempt had been made on the trial to do so; this would be, for judges to interfere with the duty of juries, who alone were the legal judges of a witness's credit; but even, if the court could consider the question, it would not be a ground for setting aside the verdict. In *Turner versus Peast*, 1 Term Rep. 717. an objection to the competency, which is a question of law, was held too late after verdict. As to the second ground, that of the jurors prejudice, it would not have been a good cause of challenge before trial, for it was not alledged, that the conversation was to the matter now in issue, and therefore, even, supposing such a case existed, as that quoted by Mr Curran, (which they denied did exist,) this would not be a good ground. As to the third point, the  
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partiality of the sheriff; that objection, if it ever had any force, was now too late: Mr Rowan knew Mr Giffard was the sheriff, he knew it for the last four months, and he does not pretend, that he did not, for though he carefully swears, that the other circumstances came to his knowledge since the trial, he does not say so of this; if he could have made a proper objection to the sheriff, he might have challenged the array, he might have applied to the court, to direct the *venire* to the coroner or the other sheriff, or put off his trial, until this sheriff was out of office; upon sufficient grounds, the court would have done any one of those things.

Another objection (not stated in the notice) had been taken, to the judge's direction, this had been already answered by the learned judge, whose words had been misquoted.

To support this argument, the following cases were cited: Clymer *versus* Littler, 3 Bur. 1244. 2 Salk. 589. Hob. 235. 3 Wilson 45. 11 St Trials 322. 2 Atk. 86. and to prove, that the prejudice of a juror must be to the matter in issue. The Triors oath from Coke's Inst.

Lord Clonmel promised, that the court should give their opinion the first opportunity, and on the next day, appointed

*Friday, February 7.*

Lord Clonmel.

THIS is a motion on behalf of the traverser, founded on a notice served the 3d day of February, to set aside the verdict: first, as contrary to justice, and founded on false evidence and testimony, not deserving any credit: secondly, as some of the jury were prejudiced and at enmity with the traverser, and had declared their opinion before they were on the jury: the third ground is, that the sheriff who arrayed the pannel was prejudiced against the traverser,



verser, and did array the panel so as to have him tried by an unfair jury.

These objections to be founded on six affidavits, filed the 3d of February, on the nature of the case and reasons to be offered. The motion was called on next day.

Another objection was founded on the argument of counsel, an observation not upon oath; it was argued as if it had been used by me in my charge to the jury. I shall take notice of this also.

The affidavits to the first point go to the credit of Lyfter; Clarke, a peruke-maker, swears that he believes Lyfter ought not to be believed on his oath, because in a case in the court of Conscience, he swore he knew nothing of the deponent, &c. The next is John Coultry, a gentleman's affidavit, who is of the same opinion, and swears to a transaction of a horse, and to Lyfter personating his brother.

Mr Rowan himself makes two affidavits, in the first he says, that if these persons had attended the trial, Lyfter would have been fully discredited; this is however only on belief, and I dare say, this impression was made upon his mind; he goes on and says, that from what he hears daily, he has no doubt of fully proving that Lyfter deserves no credit.

This goes to the first point in the notice. As to the second; Atkinson, a watch-maker, swears, that in August last, on an illumination for the taking of Valenciennes, he had a conversation with George Perrin, one of the jurors; that Perrin said the country would not prosper till Rowan and some others were hanged or transported.

Porter swears, that since the commencement of this prosecution, Perrin made use of the same sort of expression; and Mr Rowan swears, that he believes the jury had unfavourable impressions of him.

To the third point Mr Rowan swears, that he has

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heard, and believes, that Sheriff Giffard, by whom, or his under sheriff, the panel was arrayed, is the conductor of a government paper, an officer in the revenue, and an officer in the Dublin militia; that he believes Mr Giffard to be strongly prejudiced against him, and that he laboured to have such a panel as he knew to be so prejudiced.

As to the general merits of the case, he swears, that he heard the evidence of the publication of the paper by him, and that such testimony was utterly false. As to the rest of the evidence he is silent, and undertakes contradicting no other fact. Thus stand the affidavits.

It may not be amiss in me to give a short history, so far as I have judicial knowledge of this case, with respect to the situation in which the defendant stood before the trial. He was arrested above a year ago; gave bail before Hilary 1793; he gave bail the 20th of December, 1792; the first information was filed in Hilary 1793, on the 6th of May last, nine months before the trial, in Easter term, Mr Emmet moved to vacate Mr Rowan's recognizance, the Attorney General consented; Mr Rowan and his bail appeared in court, and the recognizance was vacated; he was ready to be tried, and a motion was made by Mr Recorder of Dublin, to fix a day for the trial in the next term; the Attorney General, however, having declared that he had discovered an error in the information, entered a *noli prosequi* upon that, and filed a new information, and no day was therefore appointed; last Michaelmas term, several weeks after the present sheriffs were sworn into office, the Attorney General moved to amend the information, by striking out one of the innuendos, which was agreed to by the defendant's counsel in open court. I mention these particulars, as I shall apply part of my argument to this part of the



the case. On the 29th of January, the day appointed for the trial, it was called on, no challenge was taken to the array or to the favour, and a jury was sworn to try the cause; questions were put to some of them, as to their having declared their opinions on the case; one who had been sworn, appearing to have made such a declaration, was by consent withdrawn; and this question, which in the books is said to tend to *reproach*, was not objected to by the prosecution.

I shall take the objections in order of time.

One is, that the sheriff is the conductor of a government paper, &c. this I shall first consider in point of law, and then in point of hardship, as addressed to the discretion of the court. First, would it have been good cause of challenge upon demurrer? Certainly not; there is in it nothing certain or ascertained; is it a legal challenge? what is a government newspaper? In legal estimation, a chimera of the brain; is it meant to be insinuated that government or the crown, and Mr Rowan are at war; that any thing done on the part of government must be injurious to him, or by him to government? I trust not; put it the other way, suppose that a juror published a paper called Mr Rowan's paper or the Freeman's Journal, would it have furnished an objection on the part of the prosecution? It would not; but he has an office in the revenue, and a commission in the militia; if these are either disqualifications, mark the consequence, every sheriff of the thirty-two counties is disqualified to return a panel, and the same grant which qualifies them to act as sheriffs, disqualifies them, for their very office of sheriff is held from the crown; such an absurdity does this objection involve; and here it is still weaker, for the office is not held by appointment of the crown, but by election.

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But, Mr Rowan *believes*, he is prejudiced against him, and laboured to procure a panel of prejudiced persons. Would *his* belief have been evidence of favour? Surely not. Our law is established, and not vague or grounded in weak suspicions, it disregards them, and appoints a time, when legal objections can be only received; those to the array before any of the jury are sworn, those to the polls before each comes to the book; and, if a man takes his chance with the jury, he afterwards comes too late: such is the language of the law, and founded on manifest principles of justice. As to hardship, there is none here; he had three months notice of trial, he had two terms, during which time, he never expressed any suspicion of the sheriff; he and his attorney were both at large, knew who the sheriff was; and, even in his own affidavit, he does not alledge, that he discovered these circumstances since the trial; indeed, the reasons of his belief speak the contrary, that he is conductor of a government newspaper, a militia officer and an officer in the revenue.

Next, as to the jurors; the greatest part of what I have said of challenges will directly apply, if the challenge had been taken in due time; supposing it to be true, it would not have been sufficient, for it is not alledged, that the conversation was to the matter in issue or in malice to the party accused. 2 Hawkins 689. cited by the Prime Serjeant, and the Triers oath cited by Mr Frankland, prove that these ingredients are necessary; but, I still resort to the objection, that the challenge comes now too late.

The next is the question of credit, and it is a question of great extent and formidable consequence to the criminal law. The object here is, to let in new witnesses to discredit the testimony of a person, whose credit has already been attacked on the trial; if this is admitted, no verdict for a misdemeanor could



could ever stand, while a man could be found in the kingdom, to swear that a witness did not deserve credit, it would be a direct invitation to perjury, and such perjury, as no man could be punished for; it would be an inducement to parties, to withhold evidence from the first trial, in order to take a chance of a jury, and be secure of a new one: it would be a temptation to interested persons, to perjure themselves with safety; it would be a wound to the constitution, by transferring the consideration of credibility, from the jury to the court, and would be totally overturning trial by jury.

It is admitted that no case can be found to authorize this application, except one which was cited by Mr Curran, as from 7 Modern. I have looked through the book, and can find no such case; there is indeed a case in it, which, as far as it goes makes against him; but there are cases strong against verdicts, even where the witnesses were *incompetent*,\* of which the court, not the jury, are the legal judges. The case in 7 Modern, which I have mentioned, is directly against the points urged, for that was a case of a nonsuit, which the court refused to set aside, although the deed upon which the defendant relied, was discovered after trial to have been a forgery.

The case in the Term Reports, vol. 1, p. 717. is much stronger, than this against the application of the traverser, where five of the witnesses were discovered to have been incompetent, and should not have been examined at all.

Here Mr Justice Ashurst says, "the regular time for objecting to the competency of a witness, is at the trial. The ancient doctrine on this subject was so strict, that if a witness were once sworn in chief, he could not afterwards be objected to on the ground of

\* Where a person is at all interested in the event of an issue, he is said to be *incompetent*,—*Gilbert passim*. Credibility is not defined, and therefore seems necessarily left to the decision of a jury.

of interest." "But still the objection must be made at the trial," and what was this objection? That the persons should not have been examined at all,—not to the credit, of which the jury are the judges, but an objection of law, which should, if made, have prevented their coming on the table.

Mr Justice Buller a great lawyer, says, "there has been no instance of this court granting a new trial on an allegation, that some of the witnesses were interested; and I should be very sorry to make the first precedent." Mr Justice Grose says, agreeing in this sentiment, "it might have some influence, where the party applying has the merits."

The case in 2 Term Reports 113. of *Vernon versus Hankey*, has decided, that the party shall not have a new trial, merely to let him into a defence of which he was apprised on the first.

Here then are cases which prove, that no objection can be taken after verdict, even to a witness whose competency was denied, and who should not have been suffered on the table, or permitted to open his lips.

Now see what Mr Rowan says as to his own innocence,—"that he has heard the evidence, &c. and that the same is utterly false." I shall first say, that no verdict was ever set aside on such an affidavit; at best it is but the oath of the party to his own innocence; it is not so much here, for he does not deny the facts charged, take the words in every sense they can convey; if he means false in every thing, then he denies all the evidence charging him with having read and distributed the paper in Cope-street; or it may mean that there was no such meeting as was proved; at all events, to borrow a phrase from the judge I have last cited, the affidavit "is too loose," it does not contradict any one fact specifically; could  
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he be found guilty of perjury on such swearing? I think not.

It is said, that I assumed for granted, that there was such a meeting, it was asserted by counsel; though it was not announced in the notice, or proved on oath: here I will state what I did say, and what I did not say, as imputed to me, in which I am happy in the concurrence of my brothers.

I told the jury, and meant to have told them, so far as my recollection serves me, "That an observation made by the counsel for the prosecution, struck me as obvious and strong, it was that the defendant did not contradict, by a single witness, any one of the facts sworn against him;" I then stated some leading facts, which I thought easiest to contradict; for example, "the meeting, on a Sunday, in the open day, where many in volunteer uniforms were sworn to have been present; and that if the jury believed what was sworn to by the witnesses, it amounted, in my mind, to a volume of evidence." I say so still, that the defendant did not contradict these circumstances, or prove that he did not publish the paper; but he has now made an affidavit, and see the power of perverting fancy, counsel argue for hours that affidavits are uncontradicted, and therefore are admitted to be true; on this ground then, since Mr Rowan has made two affidavits, and has not to this hour, ventured to contradict all the facts charged, are we not to assume as true, that he could not; because he does not contradict the facts of the meeting, the time, the members, in short, every thing, but the actual publication.

I will now state the facts sworn to by Lyfter; the fact of the conversation with Mr Rowan, as to Lyfter's being in coloured cloaths is not contradicted; I told the jury on this point, that vague recollection

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was no evidence, and therefore desired them to reject it; so it was as to Morton's evidence.

What did I tell the jury after stating the act, which declares, if not gives them the power of deciding on the libel? I told them that the credit of the witnesses was with them, not with me, to decide; did I then assume any fact? No! that was, I told them, like every other circumstance of the case, for them to believe or not, as it appeared to them.

Therefore, I am founded in saying, that what was imputed to me, to wit, "That the silence of the defendant amounted to a volume of evidence" was not uttered by me; I disclaim it; I did not assume or direct the jury to take the meeting for granted; I told them that it was sworn to and supported by two witnesses; that the publication by the defendant was sworn to by one, and that if they did not believe Lyfter, they ought to acquit the traverser; but I left the fact, the credit, and the intention to the jury; who were, I told them, to decide on the whole matter. But suppose it had been otherwise, and take it as favourably as the defendant and his counsel wish; it cannot avail in law or justice on this motion, first, as it makes no part of the notice: next, because it should have been objected to upon the trial, where it was the duty of the gentleman who has taken notice of it, to have objected to the direction, when it might (if improper) have been qualified or altered. But the general scope of the traverser's defence rejected the disproof of the publication.

How is this application to affect the discretion of the court?

Is there any new substantive defence set up not made before? Neither the affidavits or the defendant say, that he can produce witnesses to contradict the facts proved;—not a word;—and if an inference is

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to be drawn from silence, as his counsel contend there should, what is not contradicted is admitted.

The discretion of the court is appealed to, but that discretion is bound by the curb of legal discretion, for we cannot follow our feelings; that discretion is as well ascertained as any part of the law, and we must take the cases decided by it, as evidence of the law.

It is said, that there is an analogy between these and civil cases; but we must abandon that analogy, to answer the purpose of this motion, the great principle recognized in *Bright v. Eynon*, 1 Burr. 390, from the case in *Styles*, 466, to the present hour, is, has substantial justice been done? or has the party been manifestly injured? Apply this here, it is now fourteen months since the paper was published. Men tried for their lives have often not one, seldom more than six, and though confined in prison, are supposed to have time enough. He invites, provokes, advances to trial; complains of disappointment; is he surprised? does he want counsel? is he unattended by his friends and followers? Look at the history of the trial. Has he contradicted the facts? No: What is the injury? He says that either by right or connivance persons in his situation get at the matter charged against them. If such a practice exists, it is improper; there are many reasons for not disclosing the name of an examinant, to defend him from violence or secure him from corruption; but here the very thing seems to have been publicly known, the defendant's counsel are acquainted with the witness's family, bargains and contracts; they follow him to his indiscreet, or perhaps immoral conduct. Can we suppose, then, that he had not the usual means of knowing every tittle of the charge against him? Where are we to look for that substantial justice which will warrant us in granting

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a new trial? I cannot find it in the criminal law, in the adjudged cases, in sound discretion. Has he had every indulgence, every latitude of defence by justification, by avowed expression, by addresses to the passions? I trust that in this country, when counsel is suffered to go at large to give every light to the case of use to his client, in language decent or exceeding decency, he will not be said to have been denied every indulgence.

As to the Juror, is it to be supposed, that he forced all the others into his opinion? was there a struggle? on the contrary, it is complained, that they did not take a minute a man to consider their verdict. It is not even alledged, that by his power a verdict was gained. Either we must say then, that eleven men perjured themselves, or step from the bench into the jury box and direct them whom to credit or disbelieve, although the constitution vests in them the sole power of judging.

Mr Justice *Boyd*. My Lord Clonmel has stated them so much at large, that I shall not observe upon the affidavits. There is no doubt that the traverser had time enough to prepare his defence. His counsel rest his case first upon the partial juror, next the sheriff, next Lyster's discredit; and lastly, the alledged misdirection of the Court.

It appears that the declaration of the juror was merely on a common subject, and not referring to the question in issue, or maliciously to the traverser. The books cited prove, in my opinion, that this was therefore no challenge in point of law, and even if it were, not coming at the legal time, it is now too late. I think if it had been made at the trial, it would have been merely to the favour, a matter *in Pais* to be determined by triors, whose office the court is now called upon to take up. It does not appear to us, that justice has not been done, which  
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is the principal ground in all these cases. Besides, the short time which the jury took in determining, disproves the idea, that the misconduct of one of them could have wrought upon their verdict.

As to the Sheriff, the affidavit is grounded on belief only; the charges are not positively sworn; besides, that the same objection lies here as did to the challenging the juror, that it should have been done before the trial; the charge is general, "that he *laboured* to procure," not that he did procure.

In no part does he swear, that he has a good and legal defence to make on a new trial.

As to the third ground, Lyfter's evidence, their impeaching his credit at the trial proves that they were prepared to resist it.

There is no such doctrine to be found as that, when a party has produced some evidence, because he did not give the whole, he shall be allowed to begin again. The defendant has taken chance for a verdict, with a knowledge of the facts charged against him. Suppose a new trial were granted, and Lyfter were examined before another jury, with the suspicion of the court of King's Bench that he was incredible, would such be a fair trial of the merits?

The next ground is the misdirection of the court. I attended, as I always do, to every word that falls from his lordship, and his direction had my perfect assent, it was that the defendant had not contradicted the facts sworn to. He then stated what circumstances might have been contradicted: Morton had confirmed those circumstances. He stated that they were sworn to by two witnesses, and if the jury believed them, it amounted to a volume of evidence; that the traverser produced nobody to contradict these circumstances; he did not say, that his silence alone was evidence, he did not assume any fact, but left all to the jury; and I think it was a strong cir-

cumstance, if the jury believed the meeting, that not one person was brought to contradict a single fact.

No injustice has been done the traverser; he does not swear he is not guilty, or that he has any new defence to offer; he has had every opportunity of defence he could have already, I am therefore of opinion the verdict should stand.

Mr Justice *Downes*. Let it be remembered, that these affidavits were read without opposition from the prosecution, and that the court gave no opinion on the propriety of doing so; but as they have been read I will give my opinion upon the facts.

This is a direct appeal from a jury to the court on a matter solely in the province of the jury. The court ought not to decide upon a witness's credit, yet upon the question of credit, we are called on to set this verdict aside.

No new facts are adduced, no new witnesses brought forward who can, on a new trial, contradict the truth of the testimony already given; the only contradiction to the charge is to be found in the defendant's affidavit; the court can make no distinction between defendants, and I believe there is no instance where such an affidavit has been allowed to shake a verdict; if it could, I believe few convictions would stand.

It is said, that new light is thrown upon the question. What is it? No new defence is offered, no affidavit says one word to the matter in issue; the defendant does not say he can produce any to the facts charged. But it is on the impeachment of Lyster's credit, by persons swearing, not that the facts sworn to by him were false, which would be the best mode of defence, but that they think he ought not to be believed; and to let in these *opinions*, we are desired to set aside the verdict, for the particular facts of perjury alledged would not be suffered to appear on the trial. Nothing indeed that they say  
would



would have been admitted, for they say not one word as to his general character, and with respect to that only, and not the opinion of an individual, can a man be prepared to defend himself.

But supposing that a party, surprized by a suspicious witness, had a right to set aside a verdict against him, this cannot be set aside; we have here evidence, that there was no such surprize; the traverser was prepared at the trial to impeach Lyfter's credit, three witnesses were examined for that purpose, the jury weighed and decided upon their testimony, and after this are we to say, that what was sworn by Lyfter, corroborated by an unimpeached witness in particular circumstances, should be reconsidered by us upon affidavits. I know not where we should ever stop, if new witnesses were to be every day admitted to swear that the last deserved no credit.

As to the case cited as from 7 Modern, where it is said to be laid down, that good cause of challenge not known at the trial shall be sufficient to set aside a verdict, I have searched and cannot find it—as to the declaration of the juror, I cannot suppose, that mere general declarations as to a man's conduct, are sufficient for a cause of challenge; for suppose a rebellion in the country, if this were cause of challenge, no loyal subject could be on the jury. As to the Sheriff, no particular fact is alledged to fix the charge of prejudice, and as to his conduct with respect to the jury, it is only spoken of upon belief, no act is mentioned on which to found that belief.

If such facts could have been stated before the trial, the defendant should have taken proper steps to have the jury process sent to some other person, and upon sufficient grounds laid before the court, it would have been certainly granted.

Upon the whole, I think it would be a severe and dangerous

dangerous injury to the trial by jury, if the verdict should be set aside on all or any of these grounds.

An objection has been made to my lord's charge. When it was given I thought it a fair, clear, and able charge; I think so still; I attended minutely to it, and if I had seen any such assumption in it, I would have pointed it out on the spot, and from the manner in which my humble assistance has always been received by him, I am confident I should have had his thanks.

It has been stated from the recollection of counsel, that his lordship assumed the fact of the meeting. I do not recollect it. And that he said the defendant's silence was a volume of evidence. I must say, that the charge made no such impression on me. I think the evidence was recited without any opinion, but that he sent the question of credit to the jury. I asked him for a copy of his charge. He has given it to me, and it corresponds with my own recollection; as to the opinion that the defendant's silence was a volume of evidence, I think it perfectly just prefaced thus, "that if the jury believed that there was such a meeting, and the other circumstances, his not producing any person to his innocence, was strong evidence." Is this a violation of the maxim, *Nemo teneatur seipsum accusare*?

That silence is proof, is a monstrous assertion; if no charge is proved, the defendant should ever be silent; but where facts with circumstances are proved, where positive evidence is corroborated by circumstances, where such a meeting has been sworn to, is it not fair to say, when no evidence is brought to contradict these facts, that silence is strong evidence, when a contradiction, if it existed, might be readily proved? If no case is proved by the prosecutor, and the defendant is silent, a Judge should tell the Jury, that no case was proved, and the defendant



fendant should be acquitted ; but if the case be proved, and the circumstances are such as might be easily contradicted, then the judge is warranted in making such observations to the jury.

In the case of an accomplice in a crime, who is certainly sunk to the lowest point of degradation, if he proves circumstances easily to be contradicted, the want of contradiction is a strong circumstance to go to the Jury.

Of this objection there is no mention in the notice, from whence it must be supposed, that counsel had not thought of it at the time the direction was supposed to be given ; especially as they said immediately after the verdict, that the defendant was ready to receive judgment then if the court thought fit ; it would be hard to suppose what they would have said, if the court had taken advantage of their offer, and their mouths had been shut for ever by judgment.

Upon the whole of this case, therefore, I think the motion should be refused.

Mr Justice *Boyd* now proceeded to deliver the judgment of the court.

*Archibald Hamilton Rowan*, you have been found guilty, by a jury of your country, of publishing a seditious libel, of and concerning his majesty's government ; the charges and the libel are contained in the information ; the whole matter in issue has been, as it ought, left to the jury, who have found that the paper is a libel, that you published it, and that you did so with the intentions laid to your charge. This paper, which followed and animadverted upon a proclamation of the lord lieutenant and council, attributes to that proclamation an intention of producing the very evils it was calculated to prevent ; a proclamation which has had the additional sanction of the approbation of both houses of parliament. At  
the

the very period of this publication the great body of Roman Catholics were in the act of preparing humble and dutiful addresses to the parliament; yet by this paper, they were invited to employ force, with an open avowal that they must be led farther than they themselves wished. The volunteers are exhorted by an artful address to their pride and spirit, and government represented as having calumniated them. Despairing of being able to seduce the army, you revile them with the opprobrious title of mercenaries. The Militia, the pride, glory, and honour of the country, are branded as suspected; all are called to arms, to support your *principle*, which tends to destroy two constituent branches of the constitution; it is happy for you that these designs have not succeeded.

Mr *Rowan*. My lord, may I beg leave to say some few words before judgment.

Mr Justice *Boyd*. Most certainly, Sir,

Mr *Rowan*.—My lords, I am sensible of the forbearance of the court hitherto; their kindness while a long affidavit was drawing, and every particular of attention; I hope I shall be farther allowed, either in mitigation or justification of what is charged. I need not apologise for inaccuracies which I shall commit, I shall state every thing as it struck me.

I had hoped this verdict would be reversed, and that I would have had a new trial, on the four objections made, the evidence, the sheriff, the juror, and the charge. There are some parts of the evidence in which both the court and the prosecutors are mistaken, or do not perfectly understand; it was that I knew of the accusation against me; that I had ransacked Connaught to discredit Lyfter. This was a mistake into which the Solicitor General fell, and if he did not attend to that circumstance, it is possible the jury might not have thought of it,  
missed



missed by other circumstances, there were, I allow it, suspicions that this was the man, but they were such suspicions as strengthened my opinion, that the prosecutors were looking for other evidence, especially as several of my friends were summoned who belonged to the volunteers. If there was an assembly, there were several of them, but perhaps I am wrong to mention it; I therefore thought that I had a certainty of an acquittal. The jury I shall conceive honourable but prejudiced men. I do not conceive that a man could come into that box to swear he would be impartial, who had said I deserved to be transported, or hanged. I can see the ingenious observation of counsel, that possibly at the time the juror thought I had been guilty of murder, and was afterwards undeceived; but the conversation was upon the volunteers, upon what I thought ought to be revived.

As to the sheriff, the fact is, I had returned at an inconvenience from England, at a pecuniary loss. —The death of a near relation called me there. I appeared here, a motion was made, if it is not improper to mention it, by Mr Blenner Hasset, that the examinations might be sent up; day after day I enquired of the Clerk of the Crown, they had not gone up, the last day of the term was not motion day. It is said, that I invited and provoked a trial. 'Tis true, I did wish to be tried by an impartial jury of impartial men; I did imagine the *then* Sheriff impartial. It is asked, why I did not put it off? What would have been said by that Journal, which has always stigmatized me, since my arrival in the country, even my private character, and though in the province of an Editor he might not spare me, I did hope that he was sensible of some little honour from his situation, that he would have some little pride, that the little paragraph which sold his paper

at a corner, would not interfere where he was on his oath to do right; that he would "make due pannels of persons able and sufficient, and not suspected or procured;" this is the oath of a county sheriff, I suppose his was the same. Was it likely that the persons who made such declarations were such?

My friends proposed to me, here is a sheriff inimical, and likely to return a prejudiced jury against you. I would not solicit to put it off: I trust, said I, that he has a regard for truth, though he is Editor of a paper. How shall I say the Journal would have said of me, when I was in England it branded me as having fled from justice; these are notorious facts. It has been said, I am angry with the verdict, not with the jury; but if that was the case, I would not have called for judgment, because I thought it might be an honest, though a severe verdict:

The next day my doors were crowded with persons who came to tell me about the witnesses. In my first affidavit I did not tax the sheriff with what would make any man infamous. As to the under sheriff, perhaps it is the custom that the sub-sheriff should not interfere; I do not know, I cannot enter into the breast of the man who did it, God forbid I should! So far, I hope, I have explained my conduct concerning, not objecting at a proper legal time, I acted from impulse.

I shall now, perhaps it is improper, but as I supposed the intention a good deal of the crime, I think I heard your lordship say it was not, but if—[Here Mr Rowan paused.]

Lord Clonmel.—You have said nothing improper yet, sir, go on; but you seem not to recollect the idea perfectly.

Mr Rowan.—It was not from your lordship.

Mr



Mr *Justice Downes*.—Certainly it is an opinion no judge could hold.

Mr *Rowan*.—As to the paper ; one of my witnesses was asked, whether he was an United Irishman ? I have heard of United Irishmen ; I heard it said, this was a meeting of the United Irishmen ; The paper was addressed to the Volunteers. I avow myself an United Irishman ; my name is to many of their publications ; I glory in the name, we set out with a test, for the universal emancipation of all our fellow citizens, to shew them their rights by disseminating knowledge ; for what more could a club in Back-Lane do ? The representation of the people is allowed to be imperfect, both in and out of parliament ; we are bound by every means in our power to gain this object.

I have seen the paper ; much stress is laid on the words *universal emancipation* and *representative legislature* but I do not conceive that the last words carried the meaning which is imputed to them. I did imagine ours was a representative legislature, that the Commons represented the people, the Lords the property, and the king the power of the country. I never thought he was any thing more than a man employing the delegated force of the people ; and when that power is misused, it remains for the people to know into what hands to transfer it.

I love the heart, and I honour the hand which penned that address. I believe that from every situation, my fortune, family, rank in life, insurrection should be the last thing in my mind.

I submit myself to the justice of the court ; I desire no favour ; I am sure I shall bear it as I ought.

[Here there was a pause of a few minutes.]

Lord *Clonmel*.—I have conferred with my brothers on what has fallen from you professedly in mitigation ; you have stated two facts which you  
seem

seem to insist on as new. If it makes for you that Mr Hasset made the motion you mention, I willingly adopt it ; if I had known it before, I should not have omitted that, or any thing else done in the court. Another fact is, that the informations were not returned.

Mr *Rowan*.—I meant to the Grand Jury.

Lord *Clonmel*.—The proceeding was not by indictment, so that what you desired about the Grand Jury could not have been adopted. The first day the court sat after you were taken, my brother Downes deposited the examination in court. As to the meaning of the libel, I owe justice to every man, and here and every where else, I have said, that no inference which could be drawn from it in your favour was omitted ; you were well and ably defended. As to what you have said, nothing else shall affect the mind of the court, but what tended to mitigate or change the punishment which we had thought proper to be pronounced. We shall not adopt, or suffer to interfere, any other idea from what you have let fall, which might tend to encrease that punishment ; nothing that you have said shall make an ingredient to encrease it. Therefore we are of opinion, that the judgment of the court shall, according to the practice here and at Westminster, be delivered by the second Judge, my brother Boyd.

Mr Justice *Boyd*.—The sentence of the court is, that you pay a fine of five hundred pounds to the King ; that you be imprisoned two years, to commence from the 29th of January 1794, and until the fine be paid, and that you shall then give security for your good behaviour for seven years, yourself in 2000*l.* and two sureties in 1000*l.* each.

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The following was the pannel returned by the Sheriff for this trial.

Rt. hon. J. Cuff, M. P.	B. Woodward,
Rt. hon. D. Latouche, M. P.	Joshua Dixon, *
Sir W. G. Newcomen, M. P.	9. Richard Fox, *
1. Sir F. Hutchinso, *	10. C. Harrison, *
John Maxwell, M. P.	John Roe,
C. H. Coote, M. P.	Robert Lear,
Henry Bruen, M. P.	W. Kilbee,
H. V. Brooke, M. P.	11. G. Perrin, *
R. W. Talbot,	12. T. Sherard, *
J. Reilly, M. P.	* A. Place,
J. Pomeroy, M. P.	* Jeffery Foot,
2. F. Trench, *	N. Trumbull, Jun.
Christmas Weekes,	* Robert Powell,
John Vernon,	* Robert Walker,
3. W. Moore, *	* Robert Law,
4. H. Minchin, *	* J. Hamilton, Jun.
5. Richard Manders, *	* William Little,
6. G. Palmer, *	* Drury Jones,
7. John Reed, *	* Robert Hanna,
George Lear,	* Stuckey Simon,
Hall Lamb,	* David Weir,
8. Robert Lea, *	* William M'Kenzie,
F. Hopkins,	D. Kinahan,
	* W. Landcake,
	Thomas Palmer,
	* George Buchanan,

\* *Appeared*

F I N I S.





